

Introduced by Senator Ducheny

February 22, 2005

An act to amend Sections 3040, 3041, 7821, 7822, 8616.5, 8620, 8710, and 9210 of, to add Sections 170, 175, 180, 3041.3, 7892.5, 7907.3, 8619.5, 9208, 9209 to, and to repeal Section 7810 of, the Family Code, to amend Sections 1510, 1511, and 1601 of, to add Sections 1449, 1456, 1457, 1458, 1460.2, and 1474 to, and to repeal Section 2112 of, the Probate Code, and to amend Sections 290.1, 290.2, 291, 292, 293, 294, 295, 297, 305.5, 317, 361, 361.4, 366, 366.26, and 727.4 of, to add Sections 224, 224.1, 224.2, 224.3, 224.4, 224.5, 224.6, 360.8, 361.31, and 361.7 to, and to repeal Section 360.6 of, the Welfare and Institutions Code, relating to Indian children, *and declaring the urgency thereof, to take effect immediately.*

LEGISLATIVE COUNSEL'S DIGEST

SB 678, as amended, Ducheny. Indian children.

Existing federal law, the Indian Child Welfare Act, governs the proceedings for determining the placement of an Indian child when that child is removed from the custody of his or her parent or guardian. Existing law authorizes tribes recognized under federal law to intervene in these proceedings.

Existing provisions of state law govern child custody proceedings, adoption proceedings, including postadoption contact agreements, dependency proceedings, including termination of parental rights, the voluntary relinquishment of a child by a parent, and guardianship proceedings. Existing law recognizes that the Indian Child Welfare Act applies if the subject of these proceedings is or may be an Indian child and specifies conforming procedures in these cases with regard

to the right to notice and intervention accorded the child's tribe and the standard of proof applied in evaluating the evidence submitted, among other things.

This bill would revise, recast, and expand various provisions of state law to, among other things, ~~authorize Indian tribes that are not recognized under federal law to intervene in guardianship and child custody proceedings, as specified. These provisions would apply to~~ certain children who do not come within the definition of an Indian child for purposes of the Indian Child Welfare Act but who reside on an Indian reservation or have some other special relationship to a tribe. The bill would require a court to appoint legal counsel to represent an Indian custodian or biological parent of an Indian child in guardianship proceedings if that custodian or parent lacks the financial ability to retain counsel and requests that appointment.

Existing law also requires, until January 1, 2010, a social worker to make a home visit and conduct a criminal records check of persons living in a home before placing the child in the home.

This bill would delete that termination date, thereby making that provision effective indefinitely.

Because the bill would impose additional duties on social workers and other county employees, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

The bill would declare that it is to take effect immediately as an urgency statute.

Vote: ~~majority~~^{2/3}. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 170 is added to the Family Code, to
2 read:

170. (a) As used in this code, unless the context otherwise requires, the terms “Indian,” “Indian child,” “Indian child’s tribe,” “Indian custodian,” “Indian tribe,” “reservation,” and “tribal court” shall be defined as provided in Section 1903 of the Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.).

(b) When used in connection with an Indian child, the terms “extended family member” and “parent” shall be defined as provided in Section 1903 of the Indian Child Welfare Act.

(c) “Indian child custody proceeding” means a “child custody proceeding” within the meaning of Section 1903 of the Indian Child Welfare Act, including a voluntary or involuntary proceeding that may result in an Indian child’s temporary or long-term foster care or guardianship placement if the parent or Indian custodian cannot have the child returned upon demand, termination of parental rights or adoptive placement. An “Indian child custody proceeding” does not include a proceeding under this code commenced by the parent of an Indian child to determine the custodial rights of the child’s parents, unless the proceeding involves a petition to declare an Indian child free from the custody or control of a parent or involves a grant of custody to a person or persons other than a parent, over the objection of a parent.

(d) If an Indian child is a member of more than one tribe or is eligible for membership in more than one tribe, the court shall make a determination, in writing together with the reasons for it, as to which tribe is the Indian child’s tribe as follows:

(1) If the Indian child is or becomes a member of only one tribe, that tribe shall be designated as the Indian child’s tribe, even though the child is eligible for membership in another tribe.

(2) If an Indian child is or becomes a member of more than one tribe, or is not a member of any tribe but is eligible for membership more than one tribe, the tribe with which the child has the more significant contacts shall be designated as the Indian child’s tribe. In determining which tribe the child has the more significant contacts with, the court shall consider, among other things, the following factors:

(A) The length of residence on or near the reservation of each tribe and frequency of contact with each tribe.

(B) The child’s participation in activities of each tribe.

(C) The child’s fluency in the language of each tribe.

1 (D) Whether there has been a previous adjudication with
2 respect to the child by a court of one of the tribes.

3 (E) Residence on or near one of the tribes' reservations by the
4 child parents, Indian custodian or extended family members.

5 (f) Tribal membership of custodial parent or Indian custodian.

6 (g) Interest asserted by each tribe in response to the notice
7 specified in Section 224.11.

8 (h) The child's self identification.

9 SEC. 2. Section 175 is added to the Family Code, to read:

10 175. (a) The Legislature finds and declares the following:

11 (1) There is no resource that is more vital to the continued
12 existence and integrity of recognized Indian tribes than their
13 children, and the State of California has an interest in protecting
14 Indian children who are members of, or are eligible for
15 membership in, an Indian tribe. The state is committed to
16 protecting the essential tribal relations and best interest of an
17 Indian child by promoting practices, in accordance with the
18 Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.) and other
19 applicable law, designed to prevent the child's involuntary
20 out-of-home placement and, whenever the placement is
21 necessary or ordered, by placing the child, whenever possible, in
22 a placement that reflects the unique values of the child's tribal
23 culture and is best able to assist the child in establishing,
24 developing, and maintaining a political, cultural, and social
25 relationship with the child's tribe and tribal community.

26 (2) It is in the interest of an Indian child that the child's
27 membership in the child's Indian tribe and connection to the
28 tribal community be encouraged and protected, regardless of
29 whether:

30 (A) The child is in the physical custody of an Indian parent or
31 Indian custodian at the commencement of a child custody
32 proceeding.

33 (B) The parental rights of the child's parents have been
34 terminated.

35 (C) The child has resided or been domiciled on an Indian
36 reservation.

37 (b) In all Indian child custody proceedings the court shall
38 consider all of the findings contained in subdivision (a), strive to
39 promote the stability and security of Indian tribes and families,
40 comply with the federal Indian Child Welfare Act, and seek to

1 protect the best interest of the child. Whenever an Indian child is
2 removed from a foster care home or institution, guardianship, or
3 adoptive placement for the purpose of further foster care,
4 guardianship, or adoptive placement, placement of the child shall
5 be in accordance with the Indian Child Welfare Act.

6 (c) A determination by an Indian tribe that an unmarried
7 person, who is under the age of 18 years, is either (1) a member
8 of an Indian tribe or (2) eligible for membership in an Indian
9 tribe and a biological child of a member of an Indian tribe shall
10 constitute a significant political affiliation with the tribe and shall
11 require the application of the federal Indian Child Welfare Act to
12 the proceedings.

13 (d) (1) If the Indian Child Welfare Act applies to a proceeding
14 under this code, to the extent that this code or the Adoption and
15 Safe Families Act of 1999, (P.L. 105-89) are inconsistent or in
16 conflict with the Indian Child Welfare Act, the provisions of the
17 Indian Child Welfare Act shall prevail.

18 (2) In any case in which this code or other applicable state or
19 federal law provides a higher standard of protection to the rights
20 of the parent or Indian custodian of an Indian child, or the Indian
21 child's tribe, than the rights provided under the Indian Child
22 Welfare Act, the court shall apply the higher standard.

23 (e) Any Indian child, the Indian child's tribe, or the parent or
24 Indian custodian from whose custody the child has been
25 removed, may petition any court of competent jurisdiction to
26 invalidate an action in an Indian child custody proceeding
27 involving the child if the action violated Sections 1911, 1912,
28 and 1913 of the Indian Child Welfare Act (25 U.S.C. Sec. 1901
29 et seq.).

30 SEC. 3. Section 180 is added to the Family Code, to read:

31 180. (a) In an Indian child custody proceeding to which the
32 Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.) applies,
33 notice shall comply with subdivision (b) of this section.

34 (b) Any notice sent under this section shall be sent to the
35 minor's parent or legal guardian, Indian custodian, if any, the
36 Indian child's tribe and comply with all of the following
37 requirements:

38 (1) Notice shall be sent by registered or certified mail with
39 return receipt requested, and additional notice by first-class mail
40 is recommended.

1 (2) Notice to the tribe shall be to the tribal chairperson, unless
2 the tribe has designated another agent for service.

3 (3) Notice shall be sent to all tribes of which the child may be
4 a member or eligible for membership until the court makes a
5 determination as to which tribe is the Indian child's tribe in
6 accordance with subdivision (d) of Section 1448, after which
7 notice need only be sent to the tribe determined to be the Indian
8 child's tribe.

9 (4) Notice shall be sent to the Secretary of the Interior's
10 designated agent, the Sacramento Area Director, Bureau of
11 Indian Affairs. When the identity of the tribe of which the child
12 may be a member or eligible for membership is unknown, the
13 notice provided to the Bureau of Indian Affairs will serve as
14 substitute notice to the child's tribe. If the identity or location of
15 the Indian child's tribe is known, a copy of the notice shall also
16 be sent directly to the Secretary of the Interior if the notice is
17 required under federal law.

18 (5) In addition to the information specified in other sections of
19 this article, notice shall include all of the following information:

20 (A) The name, birthdate, and birthplace of the Indian child.

21 (B) The name of any Indian tribe in which the child is a
22 member or may be eligible for membership.

23 (C) All names known of the Indian child's biological parents,
24 grandparents, and great-grandparents, or Indian custodians,
25 including maiden, married, and former names or aliases, as well
26 as their current and former addresses, birthdates, places of birth
27 and death, tribal enrollment numbers, and any other identifying
28 information.

29 (D) A copy of the petition by which the proceeding was
30 initiated.

31 (E) A copy of the child's birth certificate, if available.

32 (F) The location, mailing address, and telephone number of
33 the court and all parties notified pursuant to this section.

34 (G) A statement listing the rights of the child's parents, Indian
35 custodians, and tribes. The rights shall include all of the
36 following:

37 (i) The right to intervene in the proceeding.

38 (ii) The right to petition the court to transfer the proceeding to
39 the tribal court of the Indian child's tribe, absent objection by
40 either parent and subject to declination by the tribal court.

1 (iii) The right to, upon request, be granted up to an additional
2 20 days from the receipt of the notice to prepare for the
3 proceeding.

4 (iv) A statement of the potential legal consequences of an
5 adjudication on the future custodial rights of the child's parents
6 or Indian custodians.

7 (v) A statement that if the parents or Indian custodians are
8 unable to afford counsel in an involuntary proceeding, counsel
9 will be appointed to represent the parents or custodians.

10 (vi) A statement that the information contained in the notice,
11 petition, pleading, and other court documents is confidential.

12 (6) Notice shall be sent whenever there is reason to believe the
13 child may be an Indian child, and for every hearing thereafter,
14 including, but not limited to, the hearing at which a final
15 adoption order is to be granted. After a tribe intervenes in a
16 proceeding, the information set out in subdivisions (3), (4), (5),
17 and (7) need not be included with notice.

18 (7) Proof of the notice, including copies of notices sent and all
19 return receipts and responses received, shall be filed with the
20 court in advance of the hearing except as permitted under
21 subdivision (h).

22 (8) No proceeding shall be held until at least 10 days after
23 receipt of notice by the parent, Indian custodian, the tribe, or the
24 Bureau of Indian Affairs, except for the detention hearing,
25 provided that notice of the detention hearing shall be given as
26 soon as possible after the filing of the petition initiating the
27 proceeding and proof of the notice is filed with the court within
28 10 days after the filing of the petition. With the exception of the
29 detention hearing, the parent, Indian custodian, or the tribe shall,
30 upon request, be granted up to 20 additional days to prepare for
31 the proceeding. Nothing herein shall be construed as limiting the
32 rights of the parent, Indian custodian, or tribe to more than 10
33 days notice when the lengthier notice period is required.

34 (9) With respect to giving notice to Indian tribes, a party shall
35 be subject to court sanctions if that person knowingly and
36 willfully falsifies or conceals a material fact concerning whether
37 the child is an Indian child, or counsels a party to do so.

38 SEC. 4. Section 3040 of the Family Code is amended to read:

1 3040. (a) Custody should be granted in the following order
2 of preference according to the best interest of the child as
3 provided in Sections 3011 and 3020:

4 (1) To both parents jointly pursuant to Chapter 4 (commencing
5 with Section 3080) or to either parent. In making an order
6 granting custody to either parent, the court shall consider, among
7 other factors, which parent is more likely to allow the child
8 frequent and continuing contact with the noncustodial parent,
9 consistent with Section 3011 and 3020, and shall not prefer a
10 parent as custodian because of that parent's sex. The court, in its
11 discretion, may require the parents to submit to the court a plan
12 for the implementation of the custody order.

13 (2) If to neither parent, to the person or persons in whose
14 home the child has been living in a wholesome and stable
15 environment.

16 (3) To any other person or persons deemed by the court to be
17 suitable and able to provide adequate and proper care and
18 guidance for the child.

19 (b) This section establishes neither a preference nor a
20 presumption for or against joint legal custody, joint physical
21 custody, or sole custody, but allows the court and the family the
22 widest discretion to choose a parenting plan that is in the best
23 interest of the child.

24 (c) Notwithstanding subdivisions (a) and (b), if the child is an
25 "Indian child" within the meaning of the Indian Child Welfare
26 Act (25 U.S.C. Sec. 1901 et seq.), or the court has reason to
27 know the child may be an Indian child, before making an order
28 granting custody to a person or persons other than a parent, over
29 the objection of a parent, the court shall apply the placement
30 preferences and standards set out in Section 361.31 of the
31 Welfare and Institutions Code.

32 SEC. 5. Section 3041 of the Family Code is amended to read:

33 3041. (a) Before making an order granting custody to a
34 person or persons other than a parent, over the objection of a
35 parent, the court shall make a finding that granting custody to a
36 parent would be detrimental to the child and that granting
37 custody to the nonparent is required to serve the best interest of
38 the child. Allegations that parental custody would be detrimental
39 to the child, other than a statement of that ultimate fact, shall not

1 appear in the pleadings. The court may, in its discretion, exclude
2 the public from the hearing on this issue.

3 (b) Subject to subdivision (d), a finding that parental custody
4 would be detrimental to the child shall be supported by clear and
5 convincing evidence.

6 (c) As used in this section, “detriment to the child” includes
7 the harm of removal from a stable placement of a child with a
8 person who has assumed, on a day-to-day basis, the role of his or
9 her parent, fulfilling both the child’s physical needs and the
10 child’s psychological needs for care and affection, and who has
11 assumed that role for a substantial period of time. A finding of
12 detriment does not require any finding of unfitness of the parents.

13 (d) Notwithstanding subdivision (b), if the court finds by a
14 preponderance of the evidence that the person to whom custody
15 may be given is a person described in subdivision (c), this
16 finding shall constitute a finding that the custody is in the best
17 interest of the child and that parental custody would be
18 detrimental to the child absent a showing by a preponderance of
19 the evidence to the contrary.

20 (e) Notwithstanding subdivisions (a) to (d), inclusive, if the
21 child is an “Indian child” within the meaning of the Indian Child
22 Welfare Act (25 U.S.C. Sec. 1901 et seq.), or the court has
23 reason to know that the child may be an Indian child, when an
24 allegation is made that parental custody would be detrimental to
25 the child, before considering the allegation and making an order
26 granting custody to a person or persons other than a parent, over
27 the objection of a parent, the court shall apply the act, including,
28 but not limited to, subdivision (c) of Section 1911 and Sections
29 1912, 1914, and 1915 of the Indian Child Welfare Act. When the
30 Indian Child Welfare Act applies to a proceeding under this
31 division, the court shall apply Sections 224.2 to 224.6, inclusive,
32 and Sections 305.5, 361.31, and 361.7 of the Welfare and
33 Institutions Code, and the following rules from the California
34 Rules of Court, as they read on January 1, 2005:

35 (1) Rule 1410, subdivision (b)(7).

36 (2) Rule 1412, subdivision (i).

37 (3) Rule 1439.

38 SEC. 6. Section 3041.3 is added to the Family Code, to read:

39 3041.3. (a) Before making an order granting custody to a
40 person or persons other than a parent, over the objection of a

1 parent, if a proceeding involves a child who is not an Indian
2 child, the court may recognize the child's tribe and grant standing
3 to participate as a party in the proceeding ~~either of the following~~
4 ~~applies:~~

5 ~~(1) The~~ *if the* child is not eligible for membership in his or her
6 tribe but is the biological grandchild of a member of the tribe or
7 resides or is domiciled within the boundaries of an Indian
8 reservation.

9 ~~(2) The child or his or her biological parent or grandparent is a~~
10 ~~member of a tribe that is not recognized as eligible for the~~
11 ~~services provided to Indians by the Secretary of the Interior but~~
12 ~~the tribe, band, or nation is recognized as an Indian tribe by any~~
13 ~~state or local governmental entity or by Canada or any of its~~
14 ~~provinces:~~

15 (b) If the court recognizes the child is tribe and grants standing
16 to the tribe to participate as a party to the proceeding, the tribe
17 may do all of the following:

18 (1) Be present at the hearing.

19 (2) Be represented by retained counsel or a representative of
20 the tribe designated by the tribe to intervene on behalf of the
21 tribe, provided that when the tribe appears as a party by a
22 representative of the tribe, the name of the representative and a
23 statement of authorization for that individual to appear on behalf
24 of the tribe shall be submitted to the court in the form of a tribal
25 resolution or other document evidencing an official act of the
26 tribe.

27 (3) Address the court.

28 (4) Receive notice of hearings.

29 (5) Examine all court documents relating to the proceeding.

30 (6) Present evidence.

31 (7) Submit written reports and recommendations to the court.

32 (8) Perform other duties and responsibilities as requested or
33 approved by the court.

34 SEC. 7. Section 7810 of the Family Code is repealed.

35 SEC. 8. Section 7821 of the Family Code is amended to read:

36 7821. A finding pursuant to this chapter shall be supported by
37 clear and convincing evidence, except as otherwise provided.

38 SEC. 9. Section 7822 of the Family Code is amended to read:

39 7822. (a) A proceeding under this part may be brought where
40 the child has been left without provision for the child's

1 identification by the child's parent or parents or by others or has
2 been left by both parents or the sole parent in the care and
3 custody of another for a period of six months or by one parent in
4 the care and custody of the other parent for a period of one year
5 without any provision for the child's support, or without
6 communication from the parent or parents, with the intent on the
7 part of the parent or parents to abandon the child.

8 (b) The failure to provide identification, failure to provide
9 support, or failure to communicate is presumptive evidence of
10 the intent to abandon. If the parent or parents have made only
11 token efforts to support or communicate with the child, the court
12 may declare the child abandoned by the parent or parents.

13 (c) If the child has been left without provision for the child's
14 identification and the whereabouts of the parents are unknown, a
15 petition may be filed after the 120th day following the discovery
16 of the child and citation by publication may be commenced. The
17 petition may not be heard until after the 180th day following the
18 discovery of the child.

19 (d) If the parent has placed the child for adoption and has not
20 refused to give the required consent to adoption, evidence of the
21 adoptive placement shall not in itself preclude the court from
22 finding an intent on the part of that parent to abandon the child. If
23 the parent has placed the child for adoption and has refused to
24 give the required consent to adoption but has not taken
25 reasonable action to obtain custody of the child, evidence of the
26 adoptive placement shall not in itself preclude the court from
27 finding an intent on the part of that parent to abandon the child.

28 (e) Notwithstanding subdivisions (a), (b), (c), and (d), if the
29 parent of an Indian child has transferred physical care, custody
30 and control of the child to an Indian custodian, that action shall
31 not be deemed to constitute an abandonment of the child.

32 SEC. 10. Section 7892.5 is added to the Family Code, to read:

33 7892.5. The court shall not declare an Indian child free from
34 the custody or control of both parents, or one parent if the other
35 no longer has custody and control, unless both of the following
36 apply:

37 (a) The court finds, supported by clear and convincing
38 evidence, that active efforts were made in accordance with
39 Section 361.7 of the Welfare and Institutions Code.

(b) The court finds, supported by evidence beyond a reasonable doubt, including testimony of one or more “qualified expert witnesses” as defined in Section 224.5 of the Welfare and Institutions Code, that the continued custody of the child by the parent is likely to result in serious emotional or physical damage to the child.

SEC. 11. Section 7907.3 is added to the Family Code, to read:

7907.3. The Interstate Compact on the Placement of Children shall not apply to any placement, sending, or bringing of an Indian child into another state pursuant to a transfer of jurisdiction to a tribal court under Section 1911 of the Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.).

SEC. 12. Section 8616.5 of the Family Code is amended to read:

8616.5. (a) The Legislature finds and declares that some adoptive children may benefit from either direct or indirect contact with birth relatives, including the birth parent or parents or an Indian tribe, after being adopted. Postadoption contact agreements are intended to ensure children of an achievable level of continuing contact when contact is beneficial to the children and the agreements are voluntarily entered into by birth relatives, including the birth parent or parents, an Indian tribe, and adoptive parents.

(b) (1) Nothing in the adoption laws of this state shall be construed to prevent the adopting parent or parents, the birth relatives, including the birth parent or parents, an Indian tribe, and the child from voluntarily entering into a written agreement to permit continuing contact between the birth relatives, including the birth parent or parents, the Indian tribe, and the child if the agreement is found by the court to have been entered into voluntarily and to be in the best interests of the child at the time the adoption petition is granted.

(2) Except as provided in paragraph (3), the terms of any postadoption contact agreement executed under this section shall be limited to, but need not include, all of the following:

(A) Provisions for visitation between the child and a birth parent or parents and other birth relatives, including siblings, and the child’s Indian tribe if the case is governed by the Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.).

1 (B) Provisions for future contact between a birth parent or
2 parents or other birth relatives, including siblings, or both, or the
3 Indian tribe and the child or an adoptive parent, or both, and in
4 cases governed by the Indian Child Welfare Act, the child's
5 Indian tribe.

6 (C) Provisions for the sharing of information about the child in
7 the future.

8 (3) The terms of any postadoption contact agreement shall be
9 limited to the sharing of information about the child, unless the
10 child has an existing relationship with the birth relative.

11 (c) At the time an adoption decree is entered pursuant to a
12 petition filed pursuant to Section 8714, 8714.5, 8802, 8912, or
13 9000, the court entering the decree may grant postadoption
14 privileges if an agreement for those privileges has been entered
15 into, including agreements entered into pursuant to subdivision
16 (f) of Section 8620. The hearing to grant the adoption petition
17 and issue an order of adoption may be continued as necessary to
18 permit parties who are in the process of negotiating a
19 postadoption agreement to reach a final agreement.

20 (d) The child who is the subject of the adoption petition shall
21 be considered a party to the postadoption contact agreement. The
22 written consent to the terms and conditions of the postadoption
23 contact agreement and any subsequent modifications of the
24 agreement by a child who is 12 years of age or older is a
25 necessary condition to the granting of privileges regarding
26 visitation, contact, or sharing of information about the child,
27 unless the court finds by a preponderance of the evidence that the
28 agreement, as written, is in the best interests of the child. Any
29 child who has been found to come within Section 300 of the
30 Welfare and Institutions Code or who is the subject of a petition
31 for jurisdiction of the juvenile court under Section 300 of the
32 Welfare and Institutions Code shall be represented by an attorney
33 for purposes of consent to the postadoption contact agreement.

34 (e) A postadoption contact agreement shall contain the
35 following warnings in bold type:

36 (1) After the adoption petition has been granted by the court,
37 the adoption cannot be set aside due to the failure of an adopting
38 parent, a birth parent, a birth relative, an Indian tribe, or the child
39 to follow the terms of this agreement or a later change to this
40 agreement.

1 (2) A disagreement between the parties or litigation brought to
2 enforce or modify the agreement shall not affect the validity of
3 the adoption and shall not serve as a basis for orders affecting the
4 custody of the child.

5 (3) A court will not act on a petition to change or enforce this
6 agreement unless the petitioner has participated, or attempted to
7 participate, in good faith in mediation or other appropriate
8 dispute resolution proceedings to resolve the dispute.

9 (f) Upon the granting of the adoption petition and the issuing
10 of the order of adoption of a child who is a dependent of the
11 juvenile court, juvenile court dependency jurisdiction shall be
12 terminated. Enforcement of the postadoption contact agreement
13 shall be under the continuing jurisdiction of the court granting
14 the petition of adoption. The court may not order compliance
15 with the agreement absent a finding that the party seeking the
16 enforcement participated, or attempted to participate, in good
17 faith in mediation or other appropriate dispute resolution
18 proceedings regarding the conflict, prior to the filing of the
19 enforcement action, and that the enforcement is in the best
20 interests of the child. Documentary evidence or offers of proof
21 may serve as the basis for the court's decision regarding
22 enforcement. No testimony or evidentiary hearing shall be
23 required. The court shall not order further investigation or
24 evaluation by any public or private agency or individual absent a
25 finding by clear and convincing evidence that the best interests of
26 the child may be protected or advanced only by that inquiry and
27 that the inquiry will not disturb the stability of the child's home
28 to the detriment of the child.

29 (g) The court may not award monetary damages as a result of
30 the filing of the civil action pursuant to subdivision (e) of this
31 section.

32 (h) A postadoption contact agreement may be modified or
33 terminated only if either of the following occurs:

34 (1) All parties, including the child if the child is 12 years of
35 age or older at the time of the requested termination or
36 modification, have signed a modified postadoption contact
37 agreement and the agreement is filed with the court that granted
38 the petition of adoption.

39 (2) The court finds all of the following:

1 (A) The termination or modification is necessary to serve the
2 best interests of the child.

3 (B) There has been a substantial change of circumstances
4 since the original agreement was executed and approved by the
5 court.

6 (C) The party seeking the termination or modification has
7 participated, or attempted to participate, in good faith in
8 mediation or other appropriate dispute resolution proceedings
9 prior to seeking court approval of the proposed termination or
10 modification.

11 Documentary evidence or offers of proof may serve as the
12 basis for the court's decision. No testimony or evidentiary
13 hearing shall be required. The court shall not order further
14 investigation or evaluation by any public or private agency or
15 individual absent a finding by clear and convincing evidence that
16 the best interests of the child may be protected or advanced only
17 by that inquiry and that the inquiry will not disturb the stability
18 of the child's home to the detriment of the child.

19 (i) All costs and fees of mediation or other appropriate dispute
20 resolution proceedings shall be borne by each party, excluding
21 the child. All costs and fees of litigation shall be borne by the
22 party filing the action to modify or enforce the agreement when
23 no party has been found by the court as failing to comply with an
24 existing postadoption contact agreement. Otherwise, a party,
25 other than the child, found by the court as failing to comply
26 without good cause with an existing agreement shall bear all the
27 costs and fees of litigation.

28 (j) The Judicial Council shall adopt rules of court and forms
29 for motions to enforce, terminate, or modify postadoption contact
30 agreements.

31 (k) The court may not set aside a decree of adoption, rescind a
32 relinquishment, or modify an order to terminate parental rights or
33 any other prior court order because of the failure of a birth
34 parent, adoptive parent, birth relative, an Indian tribe, or the child
35 to comply with any or all of the original terms of, or subsequent
36 modifications to, the postadoption contact agreement, except as
37 follows:

38 (1) The court may modify a prior court order upon petition of
39 the birth parent, birth relative, or Indian tribe prior to issuing the
40 order of adoption under the following circumstances:

1 (A) When the prospective adoptive parent expressed a
2 willingness to enter into a postadoption *contact* agreement prior
3 to or during the proceedings to terminate parental rights or free
4 the child from parental custody and control or prior to a birth
5 parent giving consent to the adoption.

6 (B) Parental rights are terminated or a petition for freedom
7 from parental custody and control is granted at least in part
8 because of ~~said~~ *that* willingness.

9 (C) The prospective adoptive parent fails to negotiate a
10 postadoption *contact* agreement in good faith.

11 (2) In the circumstances set out in paragraph (1) the court may
12 modify prior orders or issue new orders as necessary to ensure
13 the best interest of the child are met, including, but not limited to,
14 requiring the parties to engage in family mediation services for
15 the purpose of reaching a postadoption *contact* agreement,
16 initiating guardianship proceedings in lieu of an adoption, or
17 authorizing a change of adoptive placement for the child.

18 SEC. 13. Section 8619.5 is added to the Family Code, to read:

19 8619.5. Whenever a final decree of adoption of an Indian
20 child has been vacated or set aside or the adoptive parent
21 voluntarily consents to termination of his or her parental rights to
22 the child, a biological parent or prior Indian custodian may
23 petition for return of custody and the court shall grant that
24 petition unless there is a showing, in a proceeding subject to the
25 provisions of Section 1912 of the Indian Child Welfare Act (25
26 U.S.C. Sec. 1901 et seq.), that the return of custody is not in the
27 best interest of the child.

28 SEC. 14. Section 8620 of the Family Code is amended to
29 read:

30 8620. (a) (1) If a parent is seeking to relinquish a child
31 pursuant to Section 8700 or execute an adoption placement
32 agreement pursuant to Section 8801.3, the department, licensed
33 adoption agency, or adoption service provider, as applicable,
34 shall ask the child and the child's parent or custodian whether the
35 child is, or may be, a member of, or eligible for membership in
36 an Indian tribe or whether the child has been identified as a
37 member of an Indian organization. The department, licensed
38 adoption agency, or adoption service provider, as applicable,
39 shall complete the forms provided for this purpose by the
40 department and shall make this completed form a part of the file.

1 (2) If there is any oral or written information that indicates that
2 the child is, or may be, an Indian child, the department, licensed
3 adoption agency, or adoption service provider, as applicable,
4 shall obtain the following information:

5 (A) The name of the child involved, and the actual date and
6 place of birth of the child.

7 (B) The name, address, date of birth, and tribal affiliation of
8 the birth parents, maternal and paternal grandparents, and
9 maternal and paternal great-grandparents of the child.

10 (C) The name and address of extended family members of the
11 child who have a tribal affiliation.

12 (D) The name and address of the Indian tribes or Indian
13 organizations of which the child is, or may be, a member.

14 (E) A statement of the reasons why the child is, or may be, an
15 Indian.

16 (3) (A) The department, licensed adoption agency, or
17 adoption service provider, as applicable, shall send a notice,
18 which shall include information obtained pursuant to paragraph
19 (2) and a request for confirmation of the child's Indian status, to
20 any parent and any custodian of the child, and to any Indian tribe
21 of which the child is, or may be, a member or eligible for
22 membership. If any of the information required under paragraph
23 (2) cannot be obtained, the notice shall indicate that fact.

24 (B) The notice sent pursuant to subparagraph (A) shall
25 describe the nature of the proceeding and advise the recipient of
26 the Indian tribe's right to intervene in the proceeding on its own
27 behalf or on behalf of a tribal member relative of the child.

28 (b) The department shall adopt regulations to ensure that if a
29 child who is being voluntarily relinquished for adoption, pursuant
30 to Section 8700, is an Indian child, the parent of the child shall be
31 advised of his or her right to withdraw his or her consent and
32 thereby rescind the relinquishment of an Indian child for any
33 reason at any time prior to entry of a final decree of termination
34 of parental rights or adoption, pursuant to Section 1913 of Title
35 25 of the United States Code.

36 (c) If a child who is the subject of an adoption proceeding after
37 being relinquished for adoption pursuant to Section 8700, is an
38 Indian child, the child's Indian tribe may intervene in that
39 proceeding on behalf of a tribal member relative of the child.

1 (d) Any notice sent under this section shall comply with
2 Section 180.

3 (e) If all prior notices required by this section have been
4 provided to an Indian tribe, the Indian tribe receiving those prior
5 notices is encouraged to provide notice to the department and to
6 the licensed adoption agency or adoption service provider, not
7 later than five calendar days prior to the date of the hearing to
8 determine whether or not the final adoption order is to be
9 granted, indicating whether or not it intends to intervene in the
10 proceeding required by this section, either on its own behalf or
11 on behalf of a tribal member who is a relative of the child.

12 (f) The Legislature finds and declares that some adoptive
13 children may benefit from either direct or indirect contact with an
14 Indian tribe. Nothing in the adoption laws of this state shall be
15 construed to prevent the adopting parent or parents, the birth
16 relatives, including the birth parent or parents, an Indian tribe,
17 and the child, from voluntarily entering into a written agreement
18 to permit continuing contact between the Indian tribe and the
19 child, if the agreement is found by the court to have been entered
20 into voluntarily and to be in the best interest of the child at the
21 time the adoption petition is granted.

22 (g) With respect to giving notice to Indian tribes in the case of
23 voluntary placements of Indian children pursuant to this section,
24 a person, other than a birth parent of the child, shall be subject to
25 a civil penalty if that person knowingly and willfully:

26 (1) Falsifies, conceals, or covers up by any trick, scheme, or
27 device, a material fact concerning whether the child is an Indian
28 child or the parent is an Indian.

29 (2) Makes any false, fictitious, or fraudulent statement,
30 omission, or representation.

31 (3) Falsifies a written document knowing that the document
32 contains a false, fictitious, or fraudulent statement or entry
33 relating to a material fact.

34 (4) Assists any person in physically removing a child from the
35 State of California in order to obstruct the application of
36 notification.

37 (h) Civil penalties for a violation of subdivision (g) by a
38 person other than a birth parent of the child are as follows:

39 (1) For the initial violation, a person shall be fined not more
40 than ten thousand dollars (\$10,000).

1 (2) For any subsequent violation, a person shall be fined not
2 more than twenty thousand dollars (\$20,000).

3 (i) For purposes of this section, the terms “Indian tribe,”
4 “Indian organization,” and “Indian child” are defined in Section
5 1903 of Title 25 of the United States Code.

6 SEC. 15. Section 8710 of the Family Code is amended to
7 read:

8 8710. (a) If a child is being considered for adoption, the
9 department or licensed adoption agency shall first consider
10 adoptive placement in the home of a relative or, in the case of an
11 Indian child, according to the placement preferences and
12 standards set out in subdivisions (c), (d), (e), (f), (g), (h), and (i)
13 of Section 361.31 of the Welfare and Institutions Code.
14 However, if a relative is not available, if placement with an
15 available relative is not in the child’s best interest, or if
16 placement would permanently separate the child from other
17 siblings who are being considered for adoption or who are in
18 foster care and an alternative placement would not require the
19 permanent separation, the foster parent or parents of the child
20 shall be considered with respect to the child along with all other
21 prospective adoptive parents where all of the following
22 conditions are present:

23 (1) The child has been in foster care with the foster parent or
24 parents for a period of more than four months.

25 (2) The child has substantial emotional ties to the foster parent
26 or parents.

27 (3) The child’s removal from the foster home would be
28 seriously detrimental to the child’s well-being.

29 (4) The foster parent or parents have made a written request to
30 be considered to adopt the child.

31 (b) In the case of an Indian child, whose foster parent or
32 parents or other prospective adoptive parents do not fall within
33 the placement preferences established in subdivision (c) or (d) of
34 Section 361.31 of the Welfare and Institutions Code, the foster
35 parent or parents or other prospective adoptive parents shall only
36 be considered if the court finds, supported by clear and
37 convincing evidence, that good cause exists to deviate from these
38 placement preferences.

(c) This section does not apply to a child who has been adjudged a dependent of the juvenile court pursuant to Section 300 of the Welfare and Institutions Code.

SEC. 16. Section 9208 is added to the Family Code, to read:

9208. (a) The clerk of the superior court entering a final order of adoption concerning an Indian child shall provide the Secretary of the Interior or his or her designee with a copy of the order within 30 days of the date of the order, together with any information necessary to show the following:

- (1) The name and tribal affiliation of the child.
- (2) The names and addresses of the biological parents.
- (3) The names and addresses of the adoptive parents.
- (4) The identity of any agency having files or information relating to that adoptive placement.

(b) If the court records contain an affidavit of the biological parent or parents that their identity remain confidential, the court shall include that affidavit with the other information.

SEC. 17. Section 9209 is added to the Family Code, to read:

9209. (a) Upon application by an Indian individual who has reached the age of 18 years and who was the subject of an adoptive placement, the court which entered the final decree of adoption shall inform that individual of the tribal affiliation, if any, of the individual's biological parents and provide any other information as may be necessary to protect any rights flowing from the individual's tribal relationship, including, but not limited to, tribal membership rights or eligibility for federal or tribal programs or services available to Indians.

(b) If the court records contain an affidavit of the biological parent or parents that their identity remain confidential, the court shall include that affidavit with the other information.

SEC. 18. Section 9210 of the Family Code is amended to read:

9210. (a) Except as otherwise provided in subdivisions (b) and (c), a court of this state has jurisdiction over a proceeding for the adoption of a minor commenced under this part if any of the following applies:

- (1) Immediately before commencement of the proceeding, the minor lived in this state with a parent, a guardian, a prospective adoptive parent, or another person acting as parent, for at least six consecutive months, excluding periods of temporary absence,

1 or, in the case of a minor under six months of age, lived in this
2 state with any of those individuals from soon after birth and there
3 is available in this state substantial evidence concerning the
4 minor's present or future care.

5 (2) Immediately before commencement of the proceeding, the
6 prospective adoptive parent lived in this state for at least six
7 consecutive months, excluding periods of temporary absence,
8 and there is available in this state substantial evidence concerning
9 the minor's present or future care.

10 (3) The agency that placed the minor for adoption is located in
11 this state and both of the following apply:

12 (A) The minor and the minor's parents, or the minor and the
13 prospective adoptive parent, have a significant connection with
14 this state.

15 (B) There is available in this state substantial evidence
16 concerning the minor's present or future care.

17 (4) The minor and the prospective adoptive parent are
18 physically present in this state and the minor has been abandoned
19 or it is necessary in an emergency to protect the minor because
20 the minor has been subjected to or threatened with mistreatment
21 or abuse or is otherwise neglected.

22 (5) It appears that no other state would have jurisdiction under
23 requirements substantially in accordance with paragraphs (1) to
24 (4), inclusive, or another state has declined to exercise
25 jurisdiction on the ground that this state is the more appropriate
26 forum to hear a petition for adoption of the minor, and there is
27 available in this state substantial evidence concerning the minor's
28 present or future care.

29 (b) A court of this state may not exercise jurisdiction over a
30 proceeding for adoption of a minor if at the time the petition for
31 adoption is filed a proceeding concerning the custody or adoption
32 of the minor is pending in a court of another state exercising
33 jurisdiction substantially in conformity with this part, unless the
34 proceeding is stayed by the court of the other state because this
35 state is a more appropriate forum or for another reason. For
36 purposes of this subdivision, "a court of another state" includes,
37 in the case of an Indian child, a "tribal court" as defined in
38 Section 1903 of the Indian Child Welfare Act (25 U.S.C. Sec.
39 1901 et seq.).

(c) If a court of another state has issued a decree or order concerning the custody of a minor who may be the subject of a proceeding for adoption in this state, a court of this state may not exercise jurisdiction over a proceeding for adoption of the minor, unless both of the following apply:

(1) The requirements for modifying an order of a court of another state under this part are met, the court of another state does not have jurisdiction over a proceeding for adoption substantially in conformity with paragraphs (1) to (4), inclusive, of subdivision (a), or the court of another state has declined to assume jurisdiction over a proceeding for adoption.

(2) The court of this state has jurisdiction under this section over the proceeding for adoption.

SEC. 19. Section 1449 is added to the Probate Code, to read:

1449. (a) As used in this division, unless the context otherwise requires, the terms “Indian,” “Indian child,” “Indian child’s tribe,” “Indian custodian,” “Indian tribe,” “reservation,” and “tribal court” shall be defined as provided in Section 1903 of the Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.).

(b) When used in connection with an Indian child, the terms “extended family member” and “parent” shall be defined as provided in Section 1903 of the Indian Child Welfare Act.

(c) “Indian child custody proceeding” means a “child custody proceeding” within the meaning of Section 1903 of the Indian Child Welfare Act, including a voluntary or involuntary proceeding that may result in an Indian child’s temporary or long-term foster care or guardianship placement if the parent or Indian custodian cannot have the child returned upon demand, termination of parental rights or adoptive placement.

(d) When an Indian child is a member of more than one tribe or is eligible for membership in more than one tribe, the court shall make a determination, in writing together with the reasons for it, as to which tribe is the Indian child’s tribe as follows:

(1) If the Indian child is or becomes a member of only one tribe, that tribe shall be designated as the Indian child’s tribe, even though the child is eligible for membership in another tribe.

(2) If an Indian child is or becomes a member of more than one tribe, or is not a member of any tribe but is eligible for membership *in* more than one tribe, the tribe with which the child has the more significant contacts shall be designated as the

1 Indian child's tribe. In determining which tribe the child has the
2 more significant contacts with, the court shall consider, among
3 other things, the following factors:

4 (A) The length of residence on or near the reservation of each
5 tribe and frequency of contact with each tribe.

6 (B) The child's participation in activities of each tribe.

7 (C) The child's fluency in the language of each tribe.

8 (D) Whether there has been a previous adjudication with
9 respect to the child by a court of one of the tribes.

10 (E) The residence on or near one of the tribes' reservations by
11 the child parents, Indian custodian, or extended family members.

12 (f) Tribal membership of custodial parent or Indian custodian.

13 (g) Interest asserted by each tribe in response to the notice
14 specified in Section 224.11.

15 (h) The child's self-identification.

16 SEC. 20. Section 1456 is added to the Probate Code, to read:

17 1456. (a) The Legislature finds and declares the following:

18 (1) There is no resource that is more vital to the continued
19 existence and integrity of recognized Indian tribes than their
20 children, and the State of California has an interest in protecting
21 Indian children who are members of, or are eligible for
22 membership in, an Indian tribe. The state is committed to
23 protecting the essential tribal relations and best interest of an
24 Indian child by promoting practices, in accordance with the
25 Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.) and other
26 applicable law, designed to prevent the child's involuntary
27 out-of-home placement and, whenever such placement is
28 necessary or ordered, by placing the child, whenever possible, in
29 a placement that reflects the unique values of the child's tribal
30 culture and is best able to assist the child in establishing,
31 developing, and maintaining a political, cultural, and social
32 relationship with the child's tribe and tribal community.

33 (2) It is in the interest of an Indian child that the child's
34 membership in the child's Indian tribe and connection to the
35 tribal community be encouraged and protected, regardless of
36 whether or not the child is in the physical custody of an Indian
37 parent or Indian custodian at the commencement of a child
38 custody proceeding, the parental rights of the child's parents
39 have been terminated, or the child has resided or been domiciled
40 on an Indian reservation.

(b) In all Indian child custody proceedings, as defined in the federal Indian Child Welfare Act, the court shall consider all of the findings contained in subdivision (a), strive to promote the stability and security of Indian tribes and families, comply with the federal Indian Child Welfare Act, and seek to protect the best interest of the child. Whenever an Indian child is removed from a foster care home or institution, guardianship, or adoptive placement for the purpose of further foster care, guardianship, or adoptive placement, placement of the child shall be in accordance with the Indian Child Welfare Act.

(c) A determination by an Indian tribe that an unmarried person, who is under the age of 18 years, is either (1) a member of an Indian tribe or (2) eligible for membership in an Indian tribe and a biological child of a member of an Indian tribe shall constitute a significant political affiliation with the tribe and shall require the application of the federal Indian Child Welfare Act to the proceedings.

(d) (1) If the Indian Child Welfare Act applies to a proceeding under this code, to the extent that this code or the Adoption and Safe Families Act of 1999 (P.L. No. 105-89) are inconsistent or in conflict with the Indian Child Welfare Act, the provisions of the Indian Child Welfare Act shall prevail.

(2) In any case in which this code or other applicable state or federal law provides a higher standard of protection to the rights of the parent or Indian custodian of an Indian child, or the Indian child's tribe, than the rights provided under the Indian Child Welfare Act, the court shall apply the higher state or federal standard.

(e) Any Indian child, the Indian child's tribe, or the parent or Indian custodian from whose custody the child has been removed, may petition any court of competent jurisdiction to invalidate an action in an Indian child custody proceeding involving the child if the action violated Sections 1911, 1912, and 1913 of the Indian Child Welfare Act.

SEC. 21. Section 1457 is added to the Probate Code, to read:

1457. (a) If the court or petitioner knows or has reason to know that the proposed ward may be an Indian child, the Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.) shall apply to the following guardianship or conservatorship proceedings under this division:

1 (1) In any case in which the petition is a petition for
2 guardianship of the person and the proposed guardian is not the
3 natural parent or Indian custodian of the proposed ward, unless
4 the proposed guardian has been nominated by the natural parents
5 pursuant to Section 1500 and the parents retain the right to have
6 custody of the child returned to them upon demand.

7 (2) To a proceeding to have an Indian child declared free from
8 the custody and control of one or both parents brought in a
9 guardianship proceeding.

10 (3) In any case in which the petition is a petition for
11 conservatorship of the person of a minor whose marriage has
12 been dissolved, the proposed conservator is seeking physical
13 custody of the minor, the proposed conservator is not the natural
14 parent or Indian custodian of the proposed conservatee and the
15 natural parent or Indian custodian does not retain the right to
16 have custody of the child returned to them upon demand.

17 (b) When the Indian Child Welfare Act applies to a proceeding
18 under this division, the court shall apply Sections 224.2 to 224.6,
19 inclusive, and Sections 305.5, 361.31, and 361.7 of the Welfare
20 and Institutions Code, and the following rules from the California
21 Rules of Court, as they read on January 1, 2005:

22 (1) Rule 1410, subdivision (b)(7).

23 (2) Rule 1412, subdivision (i).

24 (3) Rule 1439.

25 SEC. 22. Section 1458 is added to the Probate Code, to read:

26 1458. (a) If a proceeding under this division involves a child
27 who is not an Indian child, the court may recognize the child's
28 tribe and grant standing to participate as a party to the proceeding
29 ~~if either of the following applies:~~

30 ~~(1) The~~ *if the* child is not eligible for membership in his or her
31 tribe but is the biological grandchild of a member of the tribe or
32 resides or is domiciled within the boundaries of an Indian
33 reservation.

34 ~~(2) The child or his or her biological parent or grandparent is a~~
35 ~~member of a tribe that is not recognized as eligible for the~~
36 ~~services provided to Indians by the Secretary of the Interior but~~
37 ~~the tribe, band, or nation is recognized as an Indian tribe by any~~
38 ~~state or local governmental entity or by Canada or any of its~~
39 ~~provinces.~~

(b) If the court recognizes the child's tribe and grants standing to the tribe to participate as a party to the proceeding, the tribe may do all of the following:

(1) Be present at the hearing.

(2) Be represented by retained counsel or a representative of the tribe designated by the tribe to intervene on behalf of the tribe, provided that when the tribe appears as a party by a representative of the tribe, the name of the representative and a statement of authorization for that individual to appear on behalf of the tribe shall be submitted to the court in the form of a tribal resolution or other document evidencing an official act of the tribe.

(3) Address the court.

(4) Receive notice of hearings.

(5) Examine all court documents relating to the proceeding.

(6) Present evidence.

(7) Submit written reports and recommendations to the court.

(8) Perform other duties and responsibilities as requested or approved by the court.

SEC. 23. Section 1460.2 is added to the Probate Code, to read:

1460.2. (a) If the court or petitioner knows or has reason to know that the proposed ward may be an Indian child, notice shall comply with subdivision (b) in any case in which the Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.) applies, as specified in Section 1457.

(b) Any notice sent under this section shall be sent to the minor's parent or legal guardian, Indian custodian, if any, and the Indian child's tribe, and shall comply with all of the following requirements:

(1) Notice shall be sent by registered or certified mail with return receipt requested, and additional notice by first-class mail is recommended.

(2) Notice to the tribe shall be to the tribal chairperson, unless the tribe has designated another agent for service.

(3) Notice shall be sent to all tribes of which the child may be a member or eligible for membership until the court makes a determination as to which tribe is the Indian child's tribe in accordance with subdivision (d) of Section 1448, after which

1 notice need only be sent to the tribe determined to be the Indian
2 child's tribe.

3 (4) Notice shall be sent to the Secretary of the Interior's
4 designated agent, the Sacramento Area Director, Bureau of
5 Indian Affairs. When the identity of the tribe of which the child
6 may be a member or eligible for membership is unknown, the
7 notice provided to the Bureau of Indian Affairs shall serve as
8 substitute notice to the child's tribe. If the identity or location of
9 the Indian child's tribe is known, a copy of the notice shall also
10 be sent directly to the Secretary of the Interior if that notice is
11 required under federal law.

12 (5) The notice shall include all of the following information:

13 (A) The name, birthdate, and birthplace of the Indian child.

14 (B) The name of any Indian tribe in which the child is a
15 member or may be eligible for membership.

16 (C) All names known of the Indian child's biological parents,
17 grandparents and great-grandparents or Indian custodians,
18 including maiden, married and former names or aliases, as well
19 as their current and former addresses, birthdates, places of birth
20 and death, tribal enrollment numbers, any other identifying
21 information.

22 (D) A copy of the petition.

23 (E) A copy of the child's birth certificate, if available.

24 (F) The location, mailing address, and telephone number of
25 the court and all parties notified pursuant to this section.

26 (G) A statement listing the rights of the child's parents, Indian
27 custodians, and tribes, including all of the following:

28 (i) The right to intervene in the proceeding.

29 (ii) The right to petition the court to transfer the proceeding to
30 the tribal court of the Indian child's tribe, absent objection by
31 either parent and subject to declination by the tribal court.

32 (iii) The right to, upon request, be granted up to an additional
33 20 days from the receipt of the notice to prepare for the
34 proceeding.

35 (iv) A statement of the potential legal consequences of an
36 adjudication on the future custodial rights of the child's parents
37 or Indian custodians.

38 (v) A statement that if the parents or Indian custodians are
39 unable to afford counsel in an involuntary proceeding, counsel
40 shall be appointed to represent the parents or custodians.

1 (vi) A statement that the information contained in the notice,
2 petition, pleading, and other court documents is confidential.

3 (6) Notice shall be sent whenever there is reason to believe the
4 child may be an Indian child, and for every hearing thereafter,
5 including, but not limited to, the hearing at which a final
6 adoption order is to be granted. After a tribe intervenes in a
7 proceeding, the information required pursuant to paragraphs (3),
8 (4), (5), and (7) need not be included with notice.

9 (7) Proof of the notice, including copies of notices sent and all
10 return receipts and responses received, shall be filed with the
11 court in advance of the hearing except as permitted under
12 subdivision (h).

13 (8) No proceeding shall be held until at least 10 days after
14 receipt of notice by the parent, Indian custodian, the tribe or the
15 Bureau of Indian Affairs, except for the detention hearing,
16 provided that notice of the detention hearing shall be given as
17 soon as possible after the filing of the petition initiating the
18 proceeding and proof of the notice is filed with the court within
19 10 days after the filing of the petition. With the exception of the
20 detention hearing, the parent, Indian custodian or the tribe shall,
21 upon request, be granted up to 20 additional days to prepare for
22 the proceeding. Nothing herein shall be construed as limiting the
23 rights of the parent, Indian custodian, or tribe to more than
24 10-days' notice when the lengthier notice period is required.

25 (9) With respect to giving notice to Indian tribes, a party shall
26 be subject to court sanctions if that person knowingly and
27 willfully falsifies or conceals a material fact concerning whether
28 the child is an Indian child, or counsels a party to do so.

29 SEC. 24. Section 1474 is added to the Probate Code, to read:

30 1474. (a) If an Indian custodian or biological parent of an
31 Indian child lacks the financial ability to retain counsel and
32 requests the appointment of counsel, the court shall, at or before
33 the time of the hearing, appoint the public defender or private
34 counsel to represent the interest of the person in proceedings
35 described in Part 2 (commencing with Section 1500).

36 (b) If the court appoints counsel under subdivision (a), the
37 county shall pay the sum to that counsel.

38 SEC. 25. Section 1510 of the Probate Code is amended to
39 read:

1 1510. (a) A relative or other person on behalf of the minor,
2 or the minor if 12 years of age or older, may file a petition for the
3 appointment of a guardian of the minor.

4 (b) The petition shall request that a guardian of the person or
5 estate of the minor, or both, be appointed, shall specify the name
6 and address of the proposed guardian and the name and date of
7 birth of the proposed ward, and shall state that the appointment is
8 necessary or convenient.

9 (c) The petition shall set forth, so far as is known to the
10 petitioner, the names and addresses of all of the following:

11 (1) The parents of the proposed ward.

12 (2) The person having legal custody of the proposed ward and,
13 if that person does not have the care of the proposed ward, the
14 person having the care of the proposed ward.

15 (3) The relatives of the proposed ward within the second
16 degree.

17 (4) In the case of a guardianship of the estate, the spouse of the
18 proposed ward.

19 (5) Any person nominated as guardian for the proposed ward
20 under Section 1500 or 1501.

21 (6) In the case of a guardianship of the person involving an
22 Indian child, any Indian custodian and the proposed ward's tribe.

23 (d) If the proposed ward is a patient in or on leave of absence
24 from a state institution under the jurisdiction of the State
25 Department of Mental Health or the State Department of
26 Developmental Services and that fact is known to the petitioner,
27 the petition shall state that fact and name the institution.

28 (e) The petition shall state, so far as is known to the petitioner,
29 whether or not the proposed ward is receiving or is entitled to
30 receive benefits from the Veterans Administration and the
31 estimated amount of the monthly benefit payable by the Veterans
32 Administration for the proposed ward.

33 (f) If the petitioner has knowledge of any pending adoption,
34 juvenile court, marriage dissolution, domestic relations, custody,
35 or other similar proceeding affecting the proposed ward, the
36 petition shall disclose the pending proceeding.

37 (g) If the petitioners have accepted or intend to accept physical
38 care or custody of the child with intent to adopt, whether formed
39 at the time of placement or formed subsequent to placement, the

1 petitioners shall so state in the guardianship petition, whether or
2 not an adoption petition has been filed.

3 (h) If the proposed ward is or becomes the subject of an
4 adoption petition, the court shall order the guardianship petition
5 consolidated with the adoption petition.

6 (i) If the proposed ward is or may be an Indian child, the
7 petition shall state that fact.

8 SEC. 26. Section 1511 of the Probate Code is amended to
9 read:

10 1511. (a) Except as provided in subdivisions (f) and (g), at
11 least 15 days before the hearing on the petition for the
12 appointment of a guardian, notice of the time and place of the
13 hearing shall be given as provided in subdivisions (b), (c), (d),
14 and (e) of this section. The notice shall be accompanied by a
15 copy of the petition. The court may not shorten the time for
16 giving the notice of hearing under this section.

17 (b) Notice shall be served in the manner provided in Section
18 415.10 or 415.30 of the Code of Civil Procedure, or in any
19 manner authorized by the court, on all of the following persons:

20 (1) The proposed ward if 12 years of age or older.

21 (2) Any person having legal custody of the proposed ward, or
22 serving as guardian of the estate of the proposed ward.

23 (3) The parents of the proposed ward.

24 (4) Any person nominated as a guardian for the proposed ward
25 under Section 1500 or 1501.

26 (c) Notice shall be given by mail sent to their addresses stated
27 in the petition, or in any manner authorized by the court, to all of
28 the following:

29 (1) The spouse named in the petition.

30 (2) The relatives named in the petition, except that if the
31 petition is for the appointment of a guardian of the estate only the
32 court may dispense with the giving of notice to any one or more
33 or all of the relatives.

34 (3) The person having the care of the proposed ward if other
35 than the person having legal custody of the proposed ward.

36 (d) If notice is required by Section 1461 or Section 1542 to be
37 given to the Director of Mental Health or the Director of
38 Developmental Services or the Director of Social Services, notice
39 shall be mailed as so required.

(e) If the petition states that the proposed ward is receiving or is entitled to receive benefits from the Veterans Administration, notice shall be mailed to the office of the Veterans Administration referred to in Section 1461.5.

(f) Unless the court orders otherwise, notice shall not be given to any of the following:

(1) The parents or other relatives of a proposed ward who has been relinquished to a licensed adoption agency.

(2) The parents of a proposed ward who has been judicially declared free from their custody and control.

(g) Notice need not be given to any person if the court so orders upon a determination of either of the following:

(1) The person cannot with reasonable diligence be given the notice.

(2) The giving of the notice would be contrary to the interest of justice.

(h) Before the appointment of a guardian is made, proof shall be made to the court that each person entitled to notice under this section either:

(1) Has been given notice as required by this section.

(2) Has not been given notice as required by this section because the person cannot with reasonable diligence be given the notice or because the giving of notice to that person would be contrary to the interest of justice.

(i) If notice is required by Section 1460.2 to be given to an Indian custodian or tribe, notice shall be mailed as so required.

SEC. 27. Section 1601 of the Probate Code is amended to read:

1601. Upon petition of the guardian, a parent, the ward, or, in the case of an Indian child, an Indian custodian or the ward's tribe, the court may make an order terminating the guardianship if the court determines that it is in the ward's best interest to terminate the guardianship. Notice of the hearing on the petition shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1.

SEC. 28. Section 2112 of the Probate Code is repealed.

SEC. 29. Section 224 is added to the Welfare and Institutions Code, to read:

224. (a) The Legislature finds and declares the following:

(1) There is no resource that is more vital to the continued existence and integrity of Indian tribes than their children, and the State of California has an interest in protecting Indian children who are members of, or are eligible for membership in, an Indian tribe. The state is committed to protecting the essential tribal relations and best interest of an Indian child by promoting practices, in accordance with the Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.) and other applicable law, designed to prevent the child's involuntary out-of-home placement and, whenever that placement is necessary or ordered, by placing the child, whenever possible, in a placement that reflects the unique values of the child's tribal culture and is best able to assist the child in establishing, developing, and maintaining a political, cultural, and social relationship with the child's tribe and tribal community.

(2) It is in the interest of an Indian child that the child's membership in the child's Indian tribe and connection to the tribal community be encouraged and protected, regardless of whether or not the child is in the physical custody of an Indian parent or Indian custodian at the commencement of a child custody proceeding, the parental rights of the child's parents have been terminated, or the child has resided or been domiciled on an Indian reservation.

(b) In all Indian child custody proceedings, as defined in the federal Indian Child Welfare Act the court shall consider all of the findings contained in subdivision (a), strive to promote the stability and security of Indian tribes and families, comply with the federal Indian Child Welfare Act, and seek to protect the best interest of the child. Whenever an Indian child is removed from a foster care home or institution, guardianship, or adoptive placement for the purpose of further foster care, guardianship, or adoptive placement, placement of the child shall be in accordance with the Indian Child Welfare Act.

(c) A determination by an Indian tribe that an unmarried person, who is under the age of 18 years, is either (1) a member of an Indian tribe or (2) eligible for membership in an Indian tribe and a biological child of a member of an Indian tribe shall constitute a significant political affiliation with the tribe and shall require the application of the federal Indian Child Welfare Act to the proceedings.

1 (d) (1) If the Indian Child Welfare Act applies to a child
2 custody proceeding under this code, to the extent that this code or
3 the Adoption and Safe Families Act of 1999 (P.L. 105-89) are
4 inconsistent or in conflict with the Indian Child Welfare Act, the
5 provisions of the Indian Child Welfare Act shall prevail.

6 (2) In any case in which this code or other applicable state or
7 federal law provides a higher standard of protection to the rights
8 of the parent or Indian custodian of an Indian child, or the Indian
9 child's tribe, than the rights provided under the Indian Child
10 Welfare Act, the court shall apply the higher standard.

11 (e) Any Indian child, the Indian child's tribe, or the parent or
12 Indian custodian from whose custody the child has been
13 removed, may petition any court of competent jurisdiction to
14 invalidate an action in an Indian child custody proceeding
15 involving the child if the action violated Sections 1911, 1912,
16 and 1913 of the Indian Child Welfare Act.

17 SEC. 30. Section 224.1 is added to the Welfare and
18 Institutions Code, to read:

19 224.1. (a) As used in this division, unless the context
20 otherwise requires, the terms "Indian," "Indian child," "Indian
21 child's tribe," "Indian custodian," "Indian tribe," "reservation,"
22 and "tribal court" shall be defined as provided in Section 1903 of
23 the Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.).

24 (b) As used in connection with an Indian child custody
25 proceeding, the terms "extended family member" and "parent"
26 shall be defined as provided in Section 1903 of the Indian Child
27 Welfare Act.

28 (c) "Indian child custody proceeding" means a "child custody
29 proceeding" within the meaning of Section 1903 of the Indian
30 Child Welfare Act, including a voluntary or involuntary
31 proceeding that may result in an Indian child's temporary or
32 long-term foster care or guardianship placement if the parent or
33 Indian custodian cannot have the child returned upon demand,
34 termination of parental rights or adoptive placement.

35 (d) If an Indian child is a member of more than one tribe or is
36 eligible for membership in more than one tribe, the court shall
37 make a determination, in writing together with the reasons for it,
38 as to which tribe is the Indian child's tribe as follows:

1 (1) If the Indian child is or becomes a member of only one
2 tribe, that tribe shall be designated as the Indian child's tribe,
3 even though the child is eligible for membership in another tribe.

4 (2) If an Indian child is or becomes a member of more than
5 one tribe, or is not a member of any tribe but is eligible for
6 membership in more than one tribe, the tribe with which the child
7 has the more significant contacts shall be designated as the
8 Indian child's tribe. In determining which tribe the child has the
9 more significant contacts with, the court shall consider, among
10 other things, the following factors:

11 (A) The length of residence on or near the reservation of each
12 tribe and frequency of contact with each tribe.

13 (B) The child's participation in activities of each tribe.

14 (C) The child's fluency in the language of each tribe.

15 (D) Whether there has been a previous adjudication with
16 respect to the child by a court of one of the tribes.

17 (E) Residence on or near one of the tribes' reservations by the
18 child parents, Indian custodian or extended family members.

19 (F) Tribal membership of custodial parent or Indian custodian.

20 (G) Interest asserted by each tribe in response to the notice
21 specified in Section 224.11.

22 (H) The child's self identification.

23 SEC. 31. Section 224.2 is added to the Welfare and
24 Institutions Code, to read:

25 224.2. If the court, a social worker, or probation officer
26 knows or has reason to know that an Indian child is involved, any
27 notice sent in an Indian child custody proceeding under this code
28 shall be sent to the minor's parents or legal guardian, Indian
29 custodian, if any, and the minor's tribe and comply with all of the
30 following requirements:

31 (a) Notice shall be sent by registered or certified mail with
32 return receipt requested, and additional notice by first-class mail
33 is recommended.

34 (b) Notice to the tribe shall be to the tribal chairperson, unless
35 the tribe has designated another agent for service.

36 (c) Notice shall be sent to all tribes of which the child may be
37 a member or eligible for membership.

38 (d) Notice shall be sent to the Secretary of the Interior's
39 designated agent, the Sacramento Area Director, Bureau of
40 Indian Affairs. When the identity of the tribe of which the child

1 may be a member or eligible for membership in is unknown, the
2 notice provided to the Bureau of Indian Affairs will serve as
3 substitute notice to the child's tribe. If the identity or location of
4 the parents, Indian custodians, or the minor's tribe is known, a
5 copy of the notice shall also be sent directly to the Secretary of
6 the Interior if the notice is required under federal law.

7 (e) In addition to the information specified in other sections of
8 this article, notice shall include all of the following information:

9 (1) The name, birthdate, and birthplace of the Indian child.

10 (2) The name of the Indian tribe in which the child is a
11 member or may be eligible for membership.

12 (3) All names known of the Indian child's biological parents,
13 grandparents, and great-grandparents, or Indian custodians,
14 including maiden, married and former names or aliases, as well
15 as their current and former addresses, birthdates, places of birth
16 and death, tribal enrollment numbers, and any other identifying
17 information.

18 (4) A copy of the petition by which the proceeding was
19 initiated.

20 (5) A copy of the child's birth certificate, if available.

21 (6) The location, mailing address, and telephone number of the
22 court and all parties notified pursuant to this section.

23 (7) A statement listing the rights of the child's parents or legal
24 guardians, Indian custodians, and tribes. The rights shall include
25 all of the following:

26 (A) The right to intervene in the proceeding.

27 (B) The right to petition the court to transfer the proceeding to
28 the tribal court of the Indian child's tribe, absent objection by
29 either parent and subject to declination by the tribal court.

30 (C) The right to, upon request, be granted up to an additional
31 20 days from the receipt of the notice to prepare for the
32 proceeding.

33 (D) A statement of the potential legal consequences of an
34 adjudication on the future custodial rights of the child's parents,
35 legal guardians, or Indian custodians.

36 (E) A statement that if the parents or Indian custodians are
37 unable to afford counsel in an involuntary proceeding, counsel
38 will be appointed to represent the parents or custodians.

39 (F) A statement that the information contained in the notice,
40 petition, pleading, and other court documents is confidential.

1 (f) Notice shall be sent whenever there is reason to believe the
2 child may be an Indian child, and for every hearing thereafter,
3 including, but not limited to, the hearing at which a final
4 adoption order is to be granted. After a tribe intervenes in a
5 proceeding, the information set out in paragraphs (3), (4), (5) and
6 (7) of subdivision (e) need not be included with notice.

7 (g) Proof of the notice, including copies of notices sent and all
8 return receipts and responses received, shall be filed with the
9 court in advance of the hearing except as permitted under
10 subdivision (h).

11 (h) No proceeding shall be held until at least 10 days after
12 receipt of notice by the parent, Indian custodian, the tribe, or the
13 Bureau of Indian Affairs, except for the detention hearing,
14 provided that notice of the detention hearing shall be given as
15 soon as possible after the filing of the petition initiating the
16 proceeding and proof of the notice is filed with the court within
17 10 days after the filing of the petition. With the exception of the
18 detention hearing, the parent, Indian custodian, or the tribe shall,
19 upon request, be granted up to 20 additional days to prepare for
20 that proceeding. Nothing herein shall be construed as limiting the
21 rights of the parent, Indian custodian or tribe to more than 10
22 days notice when the lengthier notice period is required.

23 (i) With respect to giving notice to Indian tribes, a party shall
24 be subject to court sanctions if that person knowingly and
25 willfully falsifies or conceals a material fact concerning whether
26 the child is an Indian child, or counsels a party to do so.

27 SEC. 32. Section 224.3 is added to the Welfare and
28 Institutions Code, to read:

29 224.3. (a) The court, county welfare department, and the
30 probation department have an affirmative and continuing duty to
31 inquire whether a child for whom a petition under Section 300,
32 601, or 602 is to be, or has been, filed is or may be an Indian
33 child in all dependency proceedings and in any juvenile wardship
34 proceedings if the child is at risk of entering foster care or is in
35 foster care.

36 (b) The court, county welfare department, and the probation
37 department shall be deemed to know or have reason to know that
38 an Indian child is involved whenever any of the following
39 circumstances exist:

1 (1) A person having an interest in the child, including the
2 child, an officer of the court, a tribe, an Indian organization, a
3 public or private agency, or a member of the child's extended
4 family provides information suggesting the child is a member of
5 a tribe or eligible for membership in a tribe or one or more of the
6 child's biological parents, grandparents, or great-grandparents
7 are or were a member of a tribe.

8 (2) The residence or domicile of the child, the child's parents,
9 or Indian custodian is in a predominantly Indian community.

10 (3) The child or the child's family has received services or
11 benefits from a tribe or services that are available to Indians from
12 tribes or the federal government, such as the Indian Health
13 Service.

14 (c) If the court, social worker, or probation officer knows or
15 has reason to know that an Indian child is involved, the social
16 worker or probation officer is required to make further inquiry
17 regarding the possible Indian status of the child, and to do so as
18 soon as practicable, by interviewing the parents, Indian
19 custodian, and extended family members to gather the
20 information required in Section 298, contacting the Bureau of
21 Indian Affairs and the State Department of Social Services for
22 assistance in identifying the names and contact information of the
23 tribes in which the child may be a member or eligible for
24 membership in and contacting the tribes and any other person
25 that reasonably can be expected to have information regarding
26 the child's membership status or eligibility.

27 (d) If the court, social worker, or probation officer knows or
28 has reason to know that an Indian child is involved, the social
29 worker or probation officer shall provide notice in accordance
30 with Section 298.

31 (e) (1) A written determination by an Indian tribe that a child
32 is or is not a member of or eligible for membership in that tribe,
33 or testimony attesting to such status by a person authorized by
34 the tribe to provide that determination, shall be conclusive.
35 Information that the child is not enrolled or eligible for
36 enrollment in the tribe is not determinative of the child's
37 membership status unless the tribe also confirms in writing that
38 enrollment is a prerequisite for membership under tribal law or
39 custom.

(2) In the absence of a contrary determination by the tribe, a determination by the Bureau of Indian Affairs that a child is or is not a member of or eligible for membership in that tribe is conclusive.

(3) If proper and adequate notice has been provided pursuant to Section 224.1, and neither a tribe nor the Bureau of Indian Affairs has provided a determinative response within 60 days after receiving that notice, the court may determine the child is not an Indian child and that the Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.) does not apply to the proceedings, provided that the court shall reverse its determination and apply the act prospectively if a tribe or the Bureau of Indian Affairs submits written evidence confirming the child is an Indian child.

(f) Notwithstanding a determination that the Indian Child Welfare Act does not apply to the proceedings made in accordance with subdivision (e) of this section, if the court, social worker, or probation officer subsequently receives any information required under subdivision (e) of Section 224.2 that was not previously available or included in the notice issued under Section 224.2, the social worker or probation officer shall provide the additional information to any tribes entitled to notice under subdivision (c) of Section 224.2 and the Bureau of Indian Affairs.

SEC. 33. Section 224.4 is added to the Welfare and Institutions Code, to read:

224.4. (a) The Indian child's tribe and Indian custodian have the right to intervene at any point in an Indian child custody proceeding.

(b) Each party to a child custody proceeding involving an Indian child shall have the right to examine all reports or other documents filed with the court upon which any decision with respect to the action may be based. With the exception of the initial petition commencing the proceedings, any report filed in connection with a hearing in an Indian child custody proceeding shall be provided to each party to the proceeding at least 10 calendar days prior to the hearing, which may be accomplished by mailing the report at least 15 calendar days prior to the hearing. The court shall grant a reasonable continuance, not to exceed 20 calendar days, upon request by any party on the ground that the report was not provided at least 10 calendar days

1 prior to the hearing as required by this section, unless the party
2 has expressly waived the requirement that the report be provided
3 within the 10-day period or the court finds by clear and
4 convincing evidence that the party's ability to proceed at the
5 hearing is not prejudiced by the lack of timely service of the
6 report.

7 SEC. 34. Section 224.5 is added to the Welfare and
8 Institutions Code, to read:

9 224.5. In an Indian child custody proceeding, the court shall
10 give full faith and credit to the public acts, records, judicial
11 proceedings, and judgments of any Indian tribe applicable to the
12 proceeding.

13 SEC. 35. Section 224.6 is added to the Welfare and
14 Institutions Code, to read:

15 224.6. (a) When testimony of a "qualified expert witness" is
16 required in an Indian child custody proceeding, a "qualified
17 expert witness" may include, but is not limited to, a social
18 worker, sociologist, physician, psychologist, traditional tribal
19 therapist and healer, spiritual leader, historian, or elder, provided
20 the individual is not an employee of the person or agency
21 recommending termination of parental rights.

22 (b) In considering whether to involuntarily place an Indian
23 child in foster care or to terminate the parental rights of the
24 parent of an Indian child, the court shall require that qualified
25 expert witnesses with specific knowledge of the child's Indian
26 tribe testify regarding that tribe's family organization and
27 child-rearing practices, and regarding whether the tribe's culture,
28 customs, and laws would support the placement of the child in
29 foster care or the termination of parental rights on the grounds
30 that continued custody of the child by the parent or Indian
31 custodian is likely to result in serious emotional or physical
32 damage to the child.

33 (c) In the following descending order of preference, a qualified
34 expert witness is a person who is one of the following:

35 (1) A member of the child's Indian tribe who is recognized by
36 the child's tribal community as knowledgeable regarding tribal
37 customs as the customs pertain to family organization or
38 child-rearing practices.

1 (2) A member of another tribe who is formally recognized by
2 the Indian child's tribe as having the knowledge to be a qualified
3 expert witness.

4 (3) A layperson having substantial experience in the delivery
5 of child and family services to Indians, and substantial
6 knowledge of the prevailing social and cultural standards and
7 child-rearing practices within the Indian child's tribe.

8 (4) A professional person having substantial education and
9 experience in the person's professional specialty and having
10 substantial knowledge of the prevailing social and cultural
11 standards and child-rearing practices within the Indian child's
12 tribe.

13 (5) A professional person having substantial education and
14 experience in the person's professional specialty and having
15 extensive knowledge of the customs, traditions, and values of the
16 Indian child's tribe as the customs, traditions, and values pertain
17 to family organization and child-rearing practices. Prior to
18 accepting the testimony of a qualified expert witness, the court
19 shall document the efforts made to secure a qualified expert
20 witness described in paragraphs (1), (2), (3) and (4). The efforts
21 shall include, but are not limited to, contacting the Indian child's
22 tribe's governing body, that tribe's Indian child welfare office,
23 and the tribe's social service office.

24 SEC. 36. Section 290.1 of the Welfare and Institutions Code
25 is amended to read:

26 290.1. If the probation officer or social worker determines
27 that the child shall be retained in custody, he or she shall
28 immediately file a petition pursuant to Section 332 with the clerk
29 of the juvenile court, who shall set the matter for hearing on the
30 detention hearing calendar. The probation officer or social
31 worker shall serve notice as prescribed in this section.

32 (a) Notice shall be given to the following persons whose
33 whereabouts are known or become known prior to the initial
34 petition hearing:

35 (1) The mother.

36 (2) The father or fathers, presumed and alleged.

37 (3) The legal guardian or guardians.

38 (4) The child, if the child is 10 years of age or older.

39 (5) Any known sibling of the child who is the subject of the
40 hearing if that sibling either is the subject of a dependency

1 proceeding or has been adjudged to be a dependent child of the
2 juvenile court. If the sibling is 10 years of age or older, the
3 sibling, the sibling's caregiver, and the sibling's attorney. If the
4 sibling is under 10 years of age, the sibling's caregiver and the
5 sibling's attorney. However, notice is not required to be given to
6 any sibling whose matter is calendared in the same court on the
7 same day.

8 (6) If there is no parent or guardian residing in California, or if
9 the residence is unknown, then to any adult relative residing
10 within the county or if none, the adult relative residing nearest
11 the court.

12 (7) The attorney for the parent or parents, or legal guardian or
13 guardians.

14 (8) The district attorney, if the district attorney has notified the
15 clerk of the court that he or she wishes to receive the petition,
16 containing the time, date, and place of the hearing.

17 (9) The probate department of the superior court that
18 appointed the guardian, if the child is a ward of a guardian
19 appointed pursuant to the Probate Code.

20 (b) No notice is required for a parent whose parental rights
21 have been terminated.

22 (c) The notice shall be given as soon as possible after the filing
23 of the petition.

24 (d) The notice of the initial petition hearing shall include all of
25 the following:

26 (1) The date, time, and place of the hearing.

27 (2) The name of the child.

28 (3) A copy of the petition.

29 SEC. 37. Section 290.2 of the Welfare and Institutions Code
30 is amended to read:

31 290.2. Upon the filing of a petition by a probation officer or
32 social worker, the clerk of the juvenile court shall issue notice, to
33 which shall be attached a copy of the petition, and he or she shall
34 cause the same to be served as prescribed in this section.

35 (a) Notice shall be given to the following persons whose
36 address is known or becomes known prior to the initial petition
37 hearing:

38 (1) The mother.

39 (2) The father or fathers, presumed and alleged.

40 (3) The legal guardian or guardians.

1 (4) The child, if the child is 10 years of age or older.

2 (5) Any known sibling of the child who is the subject of the
3 hearing if that sibling either is the subject of a dependency
4 proceeding or has been adjudged to be a dependent child of the
5 juvenile court. If the sibling is 10 years of age or older, the
6 sibling, the sibling's caregiver, and the sibling's attorney. If the
7 sibling is under 10 years of age, the sibling's caregiver and the
8 sibling's attorney. However, notice is not required to be given to
9 any sibling whose matter is calendared in the same court on the
10 same day.

11 (6) If there is no parent or guardian residing in California, or if
12 the residence is unknown, to any adult relative residing within
13 the county or if none, the adult relative residing nearest the court.

14 (7) Upon reasonable notification by counsel representing the
15 child, parent, or guardian, the clerk of the court shall give notice
16 to that counsel as soon as possible.

17 (8) The district attorney, if the district attorney has notified the
18 clerk of the court that he or she wishes to receive the petition,
19 containing the time, date, and place of the hearing.

20 (9) The probate department of the superior court that
21 appointed the guardian, if the child is a ward of a guardian
22 appointed pursuant to the Probate Code.

23 (b) No notice is required for a parent whose parental rights
24 have been terminated.

25 (c) Notice shall be served as follows:

26 (1) If the child is retained in custody, the notice shall be given
27 to the persons required to be noticed as soon as possible, and at
28 least five days before the hearing, unless the hearing is set to be
29 heard in less than five days in which case notice shall be given at
30 least 24 hours prior to the hearing.

31 (2) If the child is not retained in custody, the notice shall be
32 given to those persons required to be noticed at least 10 days
33 prior to the date of the hearing. If any person who is required to
34 be given notice is known to reside outside of the county, the clerk
35 of the juvenile court shall mail the notice and copy of the petition
36 by first-class mail, to that person as soon as possible after the
37 filing of the petition and at least 10 days before the time set for
38 hearing. Failure to respond to the notice is not cause for an arrest
39 or detention. In the instance of a failure to appear after notice by
40 first-class mail, the court shall direct that the notice and copy of

1 the petition be personally served on all persons required to
2 receive the notice and copy of the petition. For these purposes,
3 personal service of the notice and copy of the petition outside of
4 the county at least 10 days before the time set for hearing is
5 equivalent to service by first-class mail. Service may be waived
6 by any person by a voluntary appearance entered in the minutes
7 of the court or by a written waiver of service filed with the clerk
8 of the court at, or prior to, the hearing.

9 (d) The notice of the initial petition hearing shall include all of
10 the following:

11 (1) The date, time, and place of the hearing.

12 (2) The name of the child.

13 (3) A copy of the petition.

14 SEC. 38. Section 291 of the Welfare and Institutions Code is
15 amended to read:

16 291. After the initial petition hearing, the clerk of the court
17 shall cause the notice to be served in the following manner:

18 (a) Notice of the hearing shall be given to the following
19 persons:

20 (1) The mother.

21 (2) The father or fathers, presumed and alleged.

22 (3) The legal guardian or guardians.

23 (4) The child, if the child is 10 years of age or older.

24 (5) Any known sibling of the child who is the subject of the
25 hearing if that sibling either is the subject of a dependency
26 proceeding or has been adjudged to be a dependent child of the
27 juvenile court. If the sibling is 10 years of age or older, the
28 sibling, the sibling's caregiver, and the sibling's attorney. If the
29 sibling is under 10 years of age, the sibling's caregiver and the
30 sibling's attorney. However, notice is not required to be given to
31 any sibling whose matter is calendared in the same court on the
32 same day.

33 (6) Each attorney of record unless counsel of record is present
34 in court when the hearing is scheduled, then no further notice
35 need be given.

36 (7) If there is no parent or guardian residing in California, or if
37 the residence is unknown, then to any adult relative residing
38 within the county or if none, the adult relative residing nearest
39 the court.

1 (b) No notice is required for a parent whose parental rights
2 have been terminated.

3 (c) Notice shall be served as follows:

4 (1) If the child is detained, the notice shall be given to the
5 persons required to be noticed as soon as possible, and at least
6 five days before the hearing, unless the hearing is set less than
7 five days and then at least 24 hours prior to the hearing.

8 (2) If the child is not detained, the notice shall be given to
9 those persons required to be noticed at least 10 days prior to the
10 date of the hearing.

11 (d) The notice shall include all of the following:

12 (1) The name and address of the person notified.

13 (2) The nature of the hearing.

14 (3) Each section and subdivision under which the proceeding
15 has been initiated.

16 (4) The date, time, and place of the hearing.

17 (5) The name of the child upon whose behalf the petition has
18 been brought.

19 (6) A statement that:

20 (A) If they fail to appear, the court may proceed without them.

21 (B) The child, parent, guardian, Indian custodian, or adult
22 relative to whom notice is required to be given is entitled to have
23 an attorney present at the hearing.

24 (C) If the parent, guardian, Indian custodian, or adult relative
25 is indigent and cannot afford an attorney, and desires to be
26 represented by an attorney, the parent, guardian, Indian
27 custodian, or adult relative shall promptly notify the clerk of the
28 juvenile court.

29 (D) If an attorney is appointed to represent the parent,
30 guardian, Indian custodian, or adult relative, the represented
31 person shall be liable for all or a portion of the costs to the extent
32 of his or her ability to pay.

33 (E) The parent, guardian, Indian custodian, or adult relative
34 may be liable for the costs of support of the child in any
35 out-of-home placement.

36 (7) A copy of the petition.

37 (e) Service of the notice of the hearing shall be given in the
38 following manner:

39 (1) If the child is detained and the persons required to be
40 noticed are not present at the initial petition hearing, they shall be

1 noticed by personal service or by certified mail, return receipt
2 requested.

3 (2) If the child is detained and the persons required to be
4 noticed are present at the initial petition hearing, they shall be
5 noticed by personal service or by first-class mail.

6 (3) If the child is not detained, the persons required to be
7 noticed shall be noticed by personal service or by first-class mail,
8 unless the person to be served is known to reside outside the
9 county, in which case service shall be by first-class mail.

10 (f) Any of the notices required to be given under this section
11 or Sections 290.1 and 290.2 may be waived by a party in person
12 or through his or her attorney, or by a signed written waiver filed
13 on or before the date scheduled for the hearing.

14 SEC. 39. Section 292 of the Welfare and Institutions Code is
15 amended to read:

16 292. The social worker or probation officer shall give notice
17 of the review hearing held pursuant to Section 364 in the
18 following manner:

19 (a) Notice of the hearing shall be given to the following
20 persons:

21 (1) The mother.

22 (2) The presumed father or any father receiving services.

23 (3) The legal guardian or guardians.

24 (4) The child, if the child is 10 years of age or older.

25 (5) Any known sibling of the child who is the subject of the
26 hearing if that sibling either is the subject of a dependency
27 proceeding or has been adjudged to be a dependent child of the
28 juvenile court. If the sibling is 10 years of age or older, the
29 sibling, the sibling's caregiver, and the sibling's attorney. If the
30 sibling is under 10 years of age, the sibling's caregiver and the
31 sibling's attorney. However, notice is not required to be given to
32 any sibling whose matter is calendared in the same court on the
33 same day.

34 (6) Each attorney of record, if that attorney was not present at
35 the time that the hearing was set by the court.

36 (b) No notice is required for a parent whose parental rights
37 have been terminated.

38 (c) The notice of the hearing shall be served not earlier than 30
39 days, nor later than 15 days, before the hearing.

(d) The notice shall contain a statement regarding the nature of the hearing to be held and any change in the custody or status of the child being recommended by the supervising agency. The notice shall also include a statement that the child and the parent or parents or legal guardian or guardians have a right to be present at the hearing, to be represented by counsel at the hearing and the procedure for obtaining appointed counsel, and to present evidence regarding the proper disposition of the case. The notice shall also state that if the parent or parents or legal guardian or guardians fail to appear, the court may proceed without them.

(e) Service of the notice shall be by personal service, by first-class mail, or by certified mail, return receipt requested, addressed to the last known address of the person to be noticed.

SEC. 40. Section 293 of the Welfare and Institutions Code is amended to read:

293. The social worker or probation officer shall give notice of the review hearings held pursuant to Section 366.21 or 366.22 in the following manner:

(a) Notice of the hearing shall be given to the following persons:

(1) The mother.

(2) The presumed father or any father receiving services.

(3) The legal guardian or guardians.

(4) The child, if the child is 10 years of age or older.

(5) Any known sibling of the child who is the subject of the hearing if that sibling either is the subject of a dependency proceeding or has been adjudged to be a dependent child of the juvenile court. If the sibling is 10 years of age or older, the sibling, the sibling's caregiver, and the sibling's attorney. If the sibling is under 10 years of age, the sibling's caregiver and the sibling's attorney. However, notice is not required to be given to any sibling whose matter is calendared in the same court on the same day.

(6) In the case of a child removed from the physical custody of his or her parent or legal guardian, the foster parents, relative caregivers, community care facility, or foster family agency having custody of the child. In a case in which a foster family agency is notified of the hearing pursuant to this section, and the child resides in a foster home certified by the foster family

1 agency, the foster family agency shall provide timely notice of
2 the hearing to the child's caregivers.

3 (7) Each attorney of record if that attorney was not present at
4 the time that the hearing was set by the court.

5 (b) No notice is required for a parent whose parental rights
6 have been terminated.

7 (c) The notice of hearing shall be served not earlier than 30
8 days, nor later than 15 days, before the hearing.

9 (d) The notice shall contain a statement regarding the nature of
10 the hearing to be held and any change in the custody or status of
11 the child being recommended by the supervising agency. If the
12 notice is to the child, parent or parents, or legal guardian or
13 guardians, the notice shall also advise them of the right to be
14 present, the right to be represented by counsel, the right to
15 request counsel, and the right to present evidence. The notice
16 shall also state that if the parent or parents or legal guardian or
17 guardians fail to appear, the court may proceed without them.

18 (e) Service of the notice shall be by first-class mail addressed
19 to the last known address of the person to be noticed or by
20 personal service on the person. Service of a copy of the notice
21 shall be by personal service or by certified mail, return receipt
22 requested, or any other form of notice that is equivalent to
23 service by first-class mail.

24 (f) Notice to a foster parent, a relative caregiver, a certified
25 foster parent who has been approved for adoption, or the State
26 Department of Social Services when it is acting as an adoption
27 agency in counties that are not served by a county adoption
28 agency or by a licensed county adoption agency, shall indicate
29 that the person notified may attend all hearings or may submit
30 any information he or she deems relevant to the court in writing.

31 SEC. 41. Section 294 of the Welfare and Institutions Code is
32 amended to read:

33 294. The social worker or probation officer shall give notice
34 of a selection and implementation hearing held pursuant to
35 Section 366.26 in the following manner:

36 (a) Notice of the hearing shall be given to the following
37 persons:

38 (1) The mother.

39 (2) The fathers, presumed and alleged.

40 (3) The child, if the child is 10 years of age or older.

(4) Any known sibling of the child who is the subject of the hearing if that sibling either is the subject of a dependency proceeding or has been adjudged to be a dependent child of the juvenile court. If the sibling is 10 years of age or older, the sibling, the sibling's caregiver, and the sibling's attorney. If the sibling is under 10 years of age, the sibling's caregiver and the sibling's attorney. However, notice is not required to be given to any sibling whose matter is calendared in the same court on the same day.

(5) The grandparents of the child, if their address is known and if the parent's whereabouts are unknown.

(6) All counsel of record.

(b) The following persons shall not be notified of the hearing:

(1) A parent who has relinquished the child to the State Department of Social Services or to a licensed adoption agency for adoption, and the relinquishment has been accepted and filed with notice as required under Section 8700 of the Family Code.

(2) An alleged father who has denied paternity and has executed a waiver of the right to notice of further proceedings.

(3) A parent whose parental rights have been terminated.

(c) (1) Service of the notice shall be completed at least 45 days before the hearing date. Service is deemed complete at the time the notice is personally delivered to the person named in the notice or 10 days after the notice has been placed in the mail, or at the expiration of the time prescribed by the order for publication.

(2)

Service of notice in cases where publication is ordered shall be completed at least 30 days before the date of the hearing.

(d) Regardless of the type of notice required, or the manner in which it is served, once the court has made the initial finding that notice has properly been given to the parent, or to any person entitled to receive notice pursuant to this section, subsequent notice for any continuation of a Section 366.26 hearing may be by first-class mail to any last known address, by an order made pursuant to Section 296, or by any other means that the court determines is reasonably calculated, under any circumstance, to provide notice of the continued hearing. However, if the recommendation changes from the recommendation contained in the notice previously found to be proper, notice shall be provided

1 to the parent, and to any person entitled to receive notice
2 pursuant to this section, regarding that subsequent hearing.

3 (e) The notice shall contain the following information:

4 (1) The date, time, and place of the hearing.

5 (2) The right to appear.

6 (3) The parents' right to counsel.

7 (4) The nature of the proceedings.

8 (5) The recommendation of the supervising agency.

9 (6) A statement that, at the time of hearing, the court is
10 required to select a permanent plan of adoption, legal
11 guardianship, or long-term foster care for the child.

12 (f) Notice to the parents may be given in any one of the
13 following manners:

14 (1) If the parent is present at the hearing at which the court
15 schedules a hearing pursuant to Section 366.26, the court shall
16 advise the parent of the date, time, and place of the proceedings,
17 their right to counsel, the nature of the proceedings, and the
18 requirement that at the proceedings the court shall select and
19 implement a plan of adoption, legal guardianship, or long-term
20 foster care for the child. The court shall direct the parent to
21 appear for the proceedings and then direct that the parent be
22 notified thereafter by first-class mail to the parent's usual place
23 of residence or business only.

24 (2) Certified mail, return receipt requested, to the parent's last
25 known mailing address. This notice shall be sufficient if the child
26 welfare agency receives a return receipt signed by the parent.

27 (3) Personal service to the parent named in the notice.

28 (4) Delivery to a competent person who is at least 18 years of
29 age at the parent's usual place of residence or business, and
30 thereafter mailed to the parent named in the notice by first-class
31 mail at the place where the notice was delivered.

32 (5) If the residence of the parent is outside the state, service
33 may be made as described in paragraph (1), (3), or (4) or by
34 certified mail, return receipt requested.

35 (6) If the recommendation of the probation officer or social
36 worker is legal guardianship or long-term foster care, service
37 may be made by first-class mail to the parent's usual place of
38 residence or business.

39 (7) If the parent's whereabouts are unknown and the parent
40 cannot, with reasonable diligence, be served in any manner

1 specified in paragraphs (1) to (6), inclusive, the petitioner shall
2 file an affidavit with the court at least 75 days before the hearing
3 date, stating the name of the parent and describing the efforts
4 made to locate and serve the parent.

5 (A) If the court determines that there has been due diligence in
6 attempting to locate and serve the parent and the probation
7 officer or social worker recommends adoption, service shall be to
8 that parent's attorney of record, if any, by certified mail, return
9 receipt requested. If the parent does not have an attorney of
10 record, the court shall order that service be made by publication
11 of citation requiring the parent to appear at the date, time, and
12 place stated in the citation, and that the citation be published in a
13 newspaper designated as most likely to give notice to the parent.
14 Publication shall be made once a week for four consecutive
15 weeks. Whether notice is to the attorney of record or by
16 publication, the court shall also order that notice be given to the
17 grandparents of the child by first-class mail.

18 (B) If the court determines that there has been due diligence in
19 attempting to locate and serve the parent and the probation
20 officer or social worker recommends legal guardianship or
21 long-term foster care, no further notice is required to the parent,
22 but the court shall order that notice be given to the grandparents
23 of the child by first-class mail.

24 (C) In any case where the residence of the parent becomes
25 known, notice shall immediately be served upon the parent as
26 provided for in either paragraph (2), (3), (4), (5), or (6).

27 (8) If the identity of one or both of the parents, or alleged
28 parents, of the child is unknown, or if the name of one or both
29 parents is uncertain, then that fact shall be set forth in the
30 affidavit and the court, if ordering publication, shall order the
31 published citation to be directed to either the father or mother, or
32 both, of the child, and to all persons claiming to be the father or
33 mother of the child, naming and otherwise describing the child.

34 (g) Notice to the child and all counsel of record shall be by
35 first-class mail.

36 (h)

37 Notwithstanding subdivision (a), if the attorney of record is
38 present at the time the court schedules a hearing pursuant to
39 Section 366.26, no further notice is required, except as required
40 by subparagraph (A) of paragraph (7) of subdivision (f).

1 (i) This section shall also apply to children adjudged wards
2 pursuant to Section 727.31.

3 SEC. 42. Section 295 of the Welfare and Institutions Code is
4 amended to read:

5 295. The social worker or probation officer shall give notice
6 of review hearings held pursuant to Section 366.3 in the
7 following manner:

8 (a) Notice of the hearing shall be given to the following
9 persons:

10 (1) The mother.

11 (2) The presumed father.

12 (3) The legal guardian or guardians.

13 (4) The child, if the child is 10 years of age or older.

14 (5) Any known sibling of the child who is the subject of the
15 hearing if that sibling either is the subject of a dependency
16 proceeding or has been adjudged to be a dependent child of the
17 juvenile court. If the sibling is 10 years of age or older, the
18 sibling, the sibling's caregiver, and the sibling's attorney. If the
19 sibling is under 10 years of age, the sibling's caregiver and the
20 sibling's attorney. However, notice is not required to be given to
21 any sibling whose matter is calendared in the same court on the
22 same day.

23 (6) The foster parents, relative caregivers, community care
24 facility, or foster family agency having physical custody of the
25 child in the case of a child removed from the physical custody of
26 the parents or legal guardian.

27 (7) The attorney of record if that attorney of record was not
28 present at the time that the hearing was set by the court.

29 (8) The alleged father or fathers, but only if the
30 recommendation is to set a new hearing pursuant to Section
31 366.26.

32 (b) No notice is required for a parent whose parental rights
33 have been terminated.

34 (c) The notice of the review hearing shall be served no earlier
35 than 30 days, nor later than 15 days, before the hearing.

36 (d) The notice of the review hearing shall contain a statement
37 regarding the nature of the hearing to be held, any recommended
38 change in the custody or status of the child, and any
39 recommendation that the court set a new hearing pursuant to
40 Section 366.26 in order to select a more permanent plan.

1 (e) Service of notice shall be by first-class mail addressed to
2 the last known address of the person to be provided notice.

3 (f) If the child is ordered into a permanent plan of legal
4 guardianship, and subsequently a petition to terminate or modify
5 the guardianship is filed, the probation officer or social worker
6 shall serve notice of the petition not less than 15 court days prior
7 to the hearing on all persons listed in subdivision (a) and on the
8 court that established legal guardianship if it is in another county.

9 SEC. 43. Section 297 of the Welfare and Institutions Code is
10 amended to read:

11 297. (a) Notice required for an initial petition filed pursuant
12 to Section 300 is applicable to a subsequent petition filed
13 pursuant to Section 342.

14 (b) Upon the filing of a supplemental petition pursuant to
15 Section 387, the clerk of the juvenile court shall immediately set
16 the matter for hearing within 30 days of the date of the filing, and
17 the social worker or probation officer shall cause notice thereof
18 to be served upon the persons required by, and in the manner
19 prescribed by, Sections 290.1, 290.2, and 291.

20 (c) If a petition for modification has been filed pursuant to
21 Section 388, and it appears that the best interest of the child may
22 be promoted by the proposed change of the order, the recognition
23 of a sibling relationship, or the termination of jurisdiction, the
24 court shall order that a hearing be held and shall give prior
25 notice, or cause prior notice to be given, to the social worker or
26 probation officer and to the child's attorney of record, or if there
27 is no attorney of record for the child, to the child, and his or her
28 parent or parents or legal guardian or guardians in the manner
29 prescribed by Section 291 unless a different manner is prescribed
30 by the court.

31 SEC. 44. Section 305.5 of the Welfare and Institutions Code
32 is amended to read:

33 305.5. (a) If an Indian child, who is a ward of a tribal court
34 or resides or is domiciled within a reservation of an Indian tribe
35 that has exclusive jurisdiction over child custody proceedings as
36 recognized in Section 1911 of Title 25 of the United States Code
37 or reassumed exclusive jurisdiction over Indian child custody
38 proceedings pursuant to Section 1918 of Title 25 of the United
39 States Code, has been removed by a state or local authority from
40 the custody of his or her parents or Indian custodian, the state or

1 local authority shall provide notice of the removal to the tribe no
2 later than the next working day following the removal and shall
3 provide all relevant documentation to the tribe regarding the
4 removal and the child's identity. If the tribe determines that the
5 child is an Indian child, the state or local authority shall transfer
6 the child custody proceeding to the tribe within 24 hours after
7 receipt of written notice from the tribe of that determination.

8 (b) In the case of an Indian child who is not domiciled or
9 residing within a reservation of an Indian tribe or who resides or
10 is domiciled within a reservation of an Indian tribe who does not
11 have exclusive jurisdiction over child custody proceedings
12 pursuant to Section 1911 or 1918 of Title 25 of the United States
13 Code, the court shall transfer such proceeding to the jurisdiction
14 of the child's tribe upon petition of either parent, the Indian
15 custodian, if any, or the child's tribe, unless the court finds good
16 cause not to transfer. The court shall dismiss the proceeding or
17 terminate jurisdiction only after receiving proof that the tribal
18 court has accepted the transfer.

19 (c) (1) If a petition to transfer proceedings as described in
20 subdivision (b) is filed, the court shall find good cause to deny
21 the petition only if one or more of the following circumstances
22 are shown to exist:

23 (A) One or both of the child's parents object to the transfer.

24 (B) The child's tribe does not have a "tribal court" as defined
25 in Section 1910 of Title 25 of the United States Code.

26 (C) The tribal court of the child's tribe declines the transfer.

27 (D) The evidence necessary to decide the case cannot be
28 presented in the tribal court without undue hardship to the parties
29 or the witnesses, and the tribal court is unable to mitigate the
30 hardship by making arrangements to receive and consider the
31 evidence or testimony by use of remote communication, by
32 hearing the evidence or testimony at a location convenient to the
33 parties or witnesses, or by use of other means permitted in the
34 tribal court's rules of evidence or discovery.

35 (2) Socioeconomic conditions and the perceived adequacy of
36 tribal social services or judicial systems may not be considered in
37 a determination that good cause exists.

38 (d) An Indian child's domicile or place of residence is
39 determined by that of his or her parents or Indian custodian.

(e) If any petitioner in an Indian child custody proceeding has improperly removed the child from the custody of the parent or Indian custodian or has improperly retained custody after a visit or other temporary relinquishment of custody, the court shall decline jurisdiction over the petition and shall immediately return the child to his parent or Indian custodian, unless returning the child to the parent or Indian custodian would subject the child to a substantial and immediate danger or threat of danger.

SEC. 45. Section 317 of the Welfare and Institutions Code is amended to read:

317. (a) When it appears to the court that a parent, Indian custodian, or guardian of the child desires counsel but is presently financially unable to afford and cannot for that reason employ counsel, the court may appoint counsel as provided in this section.

(b) When it appears to the court that a parent, Indian custodian, or guardian of the child is presently financially unable to afford and cannot for that reason employ counsel, and the child has been placed in out-of-home care, or the petitioning agency is recommending that the child be placed in out-of-home care, the court shall appoint counsel, unless the court finds that the parent, Indian custodian, or guardian has made a knowing and intelligent waiver of counsel as provided in this section.

(c) Where a child is not represented by counsel, the court shall appoint counsel for the child unless the court finds that the child would not benefit from the appointment of counsel. The court shall state on the record its reasons for that finding. A primary responsibility of any counsel appointed to represent a child pursuant to this section shall be to advocate for the protection, safety, and physical and emotional well-being of the child. Counsel for the child may be a district attorney, public defender, or other member of the bar, provided that the counsel does not represent another party or county agency whose interests conflict with the child's. The fact that the district attorney represents the child in a proceeding pursuant to Section 300 as well as conducts a criminal investigation or files a criminal complaint or information arising from the same or reasonably related set of facts as the proceeding pursuant to Section 300 is not in and of itself a conflict of interest. The court may fix the compensation for the services of appointed counsel. The appointed counsel

1 shall have a caseload and training that assures adequate
2 representation of the child. The Judicial Council shall promulgate
3 rules of court that establish caseload standards, training
4 requirements, and guidelines for appointed counsel for children
5 and shall adopt rules as required by Section 326.5 no later than
6 July 1, 2001.

7 (d) The counsel appointed by the court shall represent the
8 parent, guardian, Indian custodian, or child at the detention
9 hearing and at all subsequent proceedings before the juvenile
10 court. Counsel shall continue to represent the parent, guardian,
11 Indian custodian, or child unless relieved by the court upon the
12 substitution of other counsel or for cause. The representation
13 shall include representing the parent, guardian, Indian custodian,
14 or the child in termination proceedings and in those proceedings
15 relating to the institution or setting aside of a legal guardianship.

16 (e) The counsel for the child shall be charged in general with
17 the representation of the child's interests. To that end, the
18 counsel shall make or cause to have made any further
19 investigations that he or she deems in good faith to be reasonably
20 necessary to ascertain the facts, including the interviewing of
21 witnesses, and he or she shall examine and cross-examine
22 witnesses in both the adjudicatory and dispositional hearings. He
23 or she may also introduce and examine his or her own witnesses,
24 make recommendations to the court concerning the child's
25 welfare, and participate further in the proceedings to the degree
26 necessary to adequately represent the child. In any case in which
27 the child is four years of age or older, counsel shall interview the
28 child to determine the child's wishes and to assess the child's
29 well-being, and shall advise the court of the child's wishes.
30 Counsel for the child shall not advocate for the return of the child
31 if, to the best of his or her knowledge, that return conflicts with
32 the protection and safety of the child. In addition counsel shall
33 investigate the interests of the child beyond the scope of the
34 juvenile proceeding and report to the court other interests of the
35 child that may need to be protected by the institution of other
36 administrative or judicial proceedings. The attorney representing
37 a child in a dependency proceeding is not required to assume the
38 responsibilities of a social worker and is not expected to provide
39 nonlegal services to the child. The court shall take whatever

1 appropriate action is necessary to fully protect the interests of the
2 child.

3 (f) Either the child or the counsel for the child, with the
4 informed consent of the child if the child is found by the court to
5 be of sufficient age and maturity to so consent, may invoke the
6 psychotherapist-client privilege, physician-patient privilege, and
7 clergyman-penitent privilege; and if the child invokes the
8 privilege, counsel may not waive it, but if counsel invokes the
9 privilege, the child may waive it. Counsel shall be holder of these
10 privileges if the child is found by the court not to be of sufficient
11 age and maturity to so consent. For the sole purpose of fulfilling
12 his or her obligation to provide legal representation of the child,
13 counsel for a child shall have access to all records with regard to
14 the child maintained by a health care facility, as defined in
15 Section 1545 of the Penal Code, health care providers, as defined
16 in Section 6146 of the Business and Professions Code, a
17 physician and surgeon or other health practitioner as defined in
18 Section 11165.8 of the Penal Code or a child care custodian, as
19 defined in Section 11165.7 of the Penal Code. Notwithstanding
20 any other law, counsel shall be given access to all records
21 relevant to the case which are maintained by state or local public
22 agencies. All information requested from a child protective
23 agency regarding a child who is in protective custody, or from a
24 child's guardian ad litem, shall be provided to the child's counsel
25 within 30 days of the request.

26 (g) In a county of the third class, if counsel is to be provided to
27 a child at county expense other than by counsel for the agency,
28 the court shall first utilize the services of the public defender
29 prior to appointing private counsel, to provide legal counsel.
30 Nothing in this subdivision shall be construed to require the
31 appointment of the public defender in any case in which the
32 public defender has a conflict of interest. In the interest of justice,
33 a court may depart from that portion of the procedure requiring
34 appointment of the public defender after making a finding of
35 good cause and stating the reasons therefor on the record.

36 (h) In a county of the third class, if counsel is to be appointed
37 for a parent, Indian custodian, or guardian at county expense, the
38 court shall first utilize the services of the alternate public
39 defender, prior to appointing private counsel, to provide legal
40 counsel. Nothing in this subdivision shall be construed to require

1 the appointment of the alternate public defender in any case in
2 which the public defender has a conflict of interest. In the interest
3 of justice, a court may depart from that portion of the procedure
4 requiring appointment of the alternate public defender after
5 making a finding of good cause and stating the reasons therefor
6 on the record.

7 SEC. 46. Section 360.6 of the Welfare and Institutions Code
8 is repealed.

9 SEC. 47. Section 360.8 is added to the Welfare and
10 Institutions Code, to read:

11 360.8. (a) When a proceeding under this chapter involves a
12 child who is Indian but who does not meet the definition of
13 “Indian child” in the Indian Child Welfare Act (25 U.S.C. Sec.
14 1901 et seq.), the court may recognize the child’s tribe and grant
15 standing to participate as a party in the proceeding. The tribe
16 may:

17 (1) Be present at the hearing.

18 (2) Be represented by retained counsel or a representative of
19 the tribe designated by the tribe to intervene on behalf of the
20 tribe, provided that when the tribe appears as a party by a
21 representative of the tribe, the name of the representative and a
22 statement of authorization for that individual to appear as the
23 tribe shall be submitted to the court in the form of a tribal
24 resolution or other document evidencing an official act of the
25 tribe.

26 (3) Address the court.

27 (4) Receive notice of hearings.

28 (5) Examine all court documents relating to the proceeding.

29 (6) Present evidence.

30 (7) Submit written reports and recommendations to the court.

31 (8) Perform other duties and responsibilities as requested or
32 approved by the court.

33 (b) Subdivision (a) applies when ~~either~~:

34 ~~(1) The~~ *the* child is not eligible for membership in his or her
35 tribe but is the biological grandchild of a member of the tribe or
36 resides or is domiciled within the boundaries of an Indian
37 reservation.

38 ~~(2) The child or his or her biological parent or grandparent is a~~
39 ~~member of a tribe that is not recognized as eligible for the~~
40 ~~services provided to Indians by the Secretary of the Interior.~~

~~Those tribes include, but are not limited to, any tribe, band, or nation recognized as an Indian tribe by any state or local government agency or by Canada or any of its provinces.~~

SEC. 48. Section 361 of the Welfare and Institutions Code is amended to read:

361. (a) In all cases in which a minor is adjudged a dependent child of the court on the ground that the minor is a person described by Section 300, the court may limit the control to be exercised over the dependent child by any parent or guardian and shall by its order clearly and specifically set forth all those limitations. Any limitation on the right of the parent or guardian to make educational decisions for the child shall be specifically addressed in the court order. The limitations may not exceed those necessary to protect the child. If the court specifically limits the right of the parent or guardian to make educational decisions for the child, the court shall at the same time appoint a responsible adult to make educational decisions for the child until one of the following occurs:

(1) The minor reaches 18 years of age, unless the child chooses not to make educational decisions for himself or herself, or is deemed by the court to be incompetent.

(2) Another responsible adult is appointed to make educational decisions for the minor pursuant to this section.

(3) The right of the parent or guardian to make educational decisions for the minor is fully restored.

(4) A successor guardian or conservator is appointed.

(5) The child is placed into a planned permanent living arrangement pursuant to paragraph (3) of subdivision (g) of Section 366.21, Section 366.22, or Section 366.26, at which time the foster parent, relative caretaker, or nonrelative extended family member as defined in Section 362.7 has the right to represent the child in educational matters pursuant to Section 56055 of the Education Code.

An individual who would have a conflict of interest in representing the child may not be appointed to make educational decisions. For purposes of this section, “an individual who would have a conflict of interest,” means a person having any interests that might restrict or bias his or her ability to make educational decisions, including, but not limited to, those conflicts of interest prohibited by Section 1126 of the Government Code, and the

1 receipt of compensation or attorneys' fees for the provision of
2 services pursuant to this section. A foster parent may not be
3 deemed to have a conflict of interest solely because he or she
4 receives compensation for the provision of services pursuant to
5 this section.

6 If the court is unable to appoint a responsible adult to make
7 educational decisions for the child and paragraphs (1) to (5),
8 inclusive, do not apply, and the child has either been referred to
9 the local educational agency for special education and related
10 services, or has a valid individualized education program, the
11 court shall refer the child to the local educational agency for
12 appointment of a surrogate parent pursuant to Section 7579.5 of
13 the Government Code.

14 All educational and school placement decisions shall seek to
15 ensure that the child is in the least restrictive educational
16 programs and has access to the academic resources, services, and
17 extracurricular and enrichment activities that are available to all
18 pupils. In all instances, educational and school placement
19 decisions shall be based on the best interests of the child.

20 (b) Subdivision (a) does not limit the ability of a parent to
21 voluntarily relinquish his or her child to the State Department of
22 Social Services or to a licensed county adoption agency at any
23 time while the child is a dependent child of the juvenile court, if
24 the department or agency is willing to accept the relinquishment.

25 (c) A dependent child may not be taken from the physical
26 custody of his or her parents or guardian or guardians with whom
27 the child resides at the time the petition was initiated, unless the
28 juvenile court finds clear and convincing evidence of any of the
29 following:

30 (1) There is a substantial danger to the physical health, safety,
31 protection, or physical or emotional well-being of the minor or
32 would be if the minor were returned home, and there are no
33 reasonable means by which the minor's physical health can be
34 protected without removing the minor from the minor's parents'
35 or guardians' physical custody. The fact that a minor has been
36 adjudicated a dependent child of the court pursuant to
37 subdivision (e) of Section 300 shall constitute prima facie
38 evidence that the minor cannot be safely left in the custody of the
39 parent or guardian with whom the minor resided at the time of
40 injury. The court shall consider, as a reasonable means to protect

1 the minor, the option of removing an offending parent or
2 guardian from the home. The court shall also consider, as a
3 reasonable means to protect the minor, allowing a nonoffending
4 parent or guardian to retain custody as long as that parent or
5 guardian presents a plan acceptable to the court demonstrating
6 that he or she will be able to protect the child from future harm.

7 (2) The parent or guardian of the minor is unwilling to have
8 physical custody of the minor, and the parent or guardian has
9 been notified that if the minor remains out of their physical
10 custody for the period specified in Section 366.26, the minor may
11 be declared permanently free from their custody and control.

12 (3) The minor is suffering severe emotional damage, as
13 indicated by extreme anxiety, depression, withdrawal, or
14 untoward aggressive behavior toward himself or herself or
15 others, and there are no reasonable means by which the minor's
16 emotional health may be protected without removing the minor
17 from the physical custody of his or her parent or guardian.

18 (4) The minor or a sibling of the minor has been sexually
19 abused, or is deemed to be at substantial risk of being sexually
20 abused, by a parent, guardian, or member of his or her household,
21 or other person known to his or her parent, and there are no
22 reasonable means by which the minor can be protected from
23 further sexual abuse or a substantial risk of sexual abuse without
24 removing the minor from his or her parent or guardian, or the
25 minor does not wish to return to his or her parent or guardian.

26 (5) The minor has been left without any provision for his or
27 her support, or a parent who has been incarcerated or
28 institutionalized cannot arrange for the care of the minor, or a
29 relative or other adult custodian with whom the child has been
30 left by the parent is unwilling or unable to provide care or
31 support for the child and the whereabouts of the parent is
32 unknown and reasonable efforts to locate him or her have been
33 unsuccessful.

34 (6) In the case of an Indian child, the continued custody of the
35 child by the parent or Indian custodian is likely to result in
36 serious emotional or physical damage to the child, and such
37 finding is supported by testimony of a "qualified expert witness"
38 as defined in Section 224.6.

39 (d) The court shall make a determination as to whether
40 reasonable efforts were made to prevent or to eliminate the need

1 for removal of the minor from his or her home or, if the minor is
2 removed for one of the reasons stated in paragraph (5) of
3 subdivision (c), whether it was reasonable under the
4 circumstances not to make any of those efforts, or, in the case of
5 an Indian child, whether active efforts within the meaning of
6 Section 361.7 were made and that these efforts have proved
7 unsuccessful. The court shall state the facts on which the decision
8 to remove the minor is based.

9 (e) The court shall make all of the findings required by
10 subdivision (a) of Section 366 in either of the following
11 circumstances:

12 (1) The minor has been taken from the custody of his or her
13 parent or guardian and has been living in an out-of-home
14 placement pursuant to Section 319.

15 (2) The minor has been living in a voluntary out-of-home
16 placement pursuant to Section 16507.4.

17 SEC. 49. Section 361.31 is added to the Welfare and
18 Institutions Code, to read:

19 361.31. (a) In any case in which an Indian child is removed
20 from the physical custody of his or her parents or Indian
21 custodian pursuant to Section 361, the child's placement shall
22 comply with this section.

23 (b) Any emergency removal, foster care, or guardianship
24 placement of an Indian child shall be in the least restrictive
25 setting which most approximates a family situation and in which
26 the child's special needs, if any, may be met. The child shall also
27 be placed within reasonable proximity to the child's home, taking
28 into account any special needs of the child. Preference shall be
29 given to the child's placement with one of the following, in
30 descending priority order:

31 (1) A member of the child's extended family, as defined in
32 Section 1903 of Title 25 of the United States Code.

33 (2) A foster home licensed, approved, or specified by the
34 child's tribe.

35 (3) An Indian foster home licensed or approved by an
36 authorized non-Indian licensing authority.

37 (4) An institution for children approved by an Indian tribe or
38 operated by an Indian organization which has a program suitable
39 to meet the Indian child's needs.

1 (c) In any adoptive placement of an Indian child, preference
2 shall be given to a placement with one of the following, in
3 descending priority order:

4 (1) A member of the child's extended family, as defined in
5 Section 1903 of Title 25 of the United States Code.

6 (2) Other members of the child's tribe.

7 (3) Another Indian family.

8 (4) A non-Indian family approved by the Indian child's tribe.

9 (d) Notwithstanding the placement preferences listed in
10 subdivisions (b) and (c), if a different order of placement
11 preference is established by the child's tribe, the court or agency
12 effecting the placement shall follow the order of preference
13 established by the tribe or in the agreement.

14 (e) Where appropriate, the placement preference of the Indian
15 child or parent shall be considered. In applying the preferences, a
16 consenting parent's request for anonymity shall also be given
17 weight by the court or agency effecting the placement. Unless
18 there is clear and convincing evidence that placement within the
19 order of preference applicable under subdivision (b), (c) or (d)
20 would be harmful to the Indian child, consideration of the
21 preference of the Indian child or parent or a parent's request for
22 anonymity shall not be a basis for placing an Indian child outside
23 of the applicable order of preference.

24 (f) The prevailing social and cultural standards of the Indian
25 community in which the parent or extended family members of
26 an Indian child reside, or with which the parent or extended
27 family members maintain social and cultural ties, or the
28 prevailing social and cultural standards of the Indian child's tribe
29 shall be applied in meeting the placement preferences under this
30 section. A determination of the applicable prevailing social and
31 cultural standards shall be confirmed by the testimony or other
32 documented support of qualified expert witnesses.

33 (g) Any person or court involved in the placement of an Indian
34 child shall use the services of the Indian child's tribe, whenever
35 available through the tribe, in seeking to secure placement within
36 the order of placement preference established in this section and
37 in the supervision of the placement.

38 (h) Except as otherwise provided in subdivision (e), the court
39 may only determine that good cause exists not to follow
40 placement preferences applicable under subdivision (b), (c) or (d)

1 when there is clear and convincing evidence that a diligent search
2 has been completed for families meeting the preference criteria
3 and no suitable placement is available. When no preferred
4 placement is available, active efforts shall be made to place the
5 child with a family committed to enabling the child to have
6 extended family visitation and participation in the cultural and
7 ceremonial events of the child's tribe.

8 (i) A record of each foster care placement or adoptive
9 placement of an Indian child shall be maintained in perpetuity by
10 the State Department of Social Services. The record shall
11 document the active efforts to comply with the applicable order
12 of preference specified in this section.

13 SEC. 50. Section 361.4 of the Welfare and Institutions Code
14 is amended to read:

15 361.4. (a) Prior to placing a child in the home of a relative, or
16 the home of any prospective guardian or other person who is not
17 a licensed or certified foster parent, the county social worker
18 shall visit the home to ascertain the appropriateness of the
19 placement.

20 (b) Whenever a child may be placed in the home of a relative,
21 or the home of any prospective guardian or other person who is
22 not a licensed or certified foster parent, the court or county social
23 worker placing the child shall cause a state and federal level
24 criminal records check to be conducted by an appropriate
25 governmental agency through the California Law Enforcement
26 Telecommunications System (CLETS) pursuant to Section
27 16504.5. The criminal records check shall be conducted with
28 regard to all persons over the age of 18 years living in the home,
29 and on any other person over the age of 18 years, other than
30 professionals providing professional services to the child, known
31 to the placing entity who may have significant contact with the
32 child, including any person who has a familial or intimate
33 relationship with any person living in the home. A criminal
34 records check may be conducted pursuant to this section on any
35 person over the age of 14 years living in the home who the
36 county social worker believes may have a criminal record.
37 Within five judicial days following the criminal records check
38 conducted through the California Law Enforcement
39 Telecommunications System, the social worker shall ensure that
40 a fingerprint clearance check of the relative and any other person

1 whose criminal record was obtained pursuant to this subdivision
2 is initiated through the Department of Justice to ensure the
3 accuracy of the criminal records check conducted through the
4 California Law Enforcement Telecommunications System and
5 shall review the results of any criminal records check to assess
6 the safety of the home. The Department of Justice shall forward
7 fingerprint requests for federal level criminal history information
8 to the Federal Bureau of Investigation pursuant to this section.

9 (c) Whenever a child may be placed in the home of a relative,
10 or a prospective guardian or other person who is not a licensed or
11 certified foster parent, the county social worker shall cause a
12 check of the Child Abuse Index pursuant to subdivision (a) of
13 Section 11170 of the Penal Code to be requested from the
14 Department of Justice. The Child Abuse Index check shall be
15 conducted on all persons over the age of 18 years living in the
16 home.

17 (d) (1) If the criminal records check indicates that the person
18 has no criminal record, the county social worker and court may
19 consider the home of the relative, prospective guardian, or other
20 person who is not a licensed or certified foster parent for
21 placement of a child.

22 (2) If the criminal records check indicates that the person has
23 been convicted of a crime that would preclude licensure under
24 Section 1522 of the Health and Safety Code, the child may not be
25 placed in the home, unless a criminal records exemption has been
26 granted by the county, based on substantial and convincing
27 evidence to support a reasonable belief that the person with the
28 criminal conviction is of such good character as to justify the
29 placement and not present a risk of harm to the child pursuant to
30 paragraph (3).

31 (3) (A) A county may issue a criminal records exemption only
32 if that county has been granted permission by the Director of
33 Social Services to issue criminal records exemptions. The county
34 may file a request with the Director of Social Services seeking
35 permission for the county to establish a procedure to evaluate and
36 grant appropriate individual criminal records exemptions for
37 persons described in subdivision (b). The director shall grant or
38 deny the county's request within 14 days of receipt. The county
39 shall evaluate individual criminal records in accordance with the
40 standards and limitations set forth in paragraph (1) of subdivision

1 (g) of Section 1522 of the Health and Safety Code, and in no
2 event shall the county place a child in the home of a person who
3 is ineligible for an exemption under that provision.

4 (B) The department shall monitor county implementation of
5 the authority to grant an exemption under this paragraph to
6 ensure that the county evaluates individual criminal records and
7 allows or disallows placements according to the standards set
8 forth in paragraph (1) of subdivision (g) of Section 1522 of the
9 Health and Safety Code.

10 (4) The department shall conduct an evaluation of the
11 implementation of paragraph (3) through random sampling of
12 county exemption decisions.

13 (5) The State Department of Social Services shall not evaluate
14 or grant criminal record exemption requests for persons
15 described in subdivision (b), unless the exemption request is
16 made by an Indian tribe pursuant to subdivision (f).

17 (6) If a county has not requested, or has not been granted,
18 permission by the State Department of Social Services to
19 establish a procedure to evaluate and grant criminal records
20 exemptions, the county may not place a child into the home of a
21 person described in subdivision (b) if any person residing in the
22 home has been convicted of a crime other than a minor traffic
23 violation, except as provided in subdivision (f).

24 (e) Nothing in this section shall preclude a county from
25 conducting a criminal background check that the county is
26 otherwise authorized to conduct using fingerprints.

27 (f) Upon request from an Indian tribe, the State Department of
28 Social Services shall evaluate an exemption request, if needed, to
29 allow placement into an Indian home that the tribe has designated
30 for placement under the Indian Child Welfare Act (25 U.S.C.
31 Sec. 1901 et seq.) that would otherwise be barred under this
32 section. However, if the county with jurisdiction over the child
33 that is the subject of the tribe's request has established an
34 approved procedure pursuant to paragraph (3) of subdivision (d),
35 the tribe may request that the county evaluate the exemption
36 request. Once a tribe has elected to have the exemption request
37 reviewed by either the State Department of Social Services or the
38 county, the exemption decision may only be made by that entity.
39 Nothing in this subdivision limits the duty of a county social

1 worker to evaluate the home for placement or to gather
2 information needed to evaluate an exemption request.

3 SEC. 51. Section 361.7 is added to the Welfare and
4 Institutions Code, to read:

5 361.7. (a) Notwithstanding Section 361.5, a party seeking an
6 involuntary foster care placement of, or termination of parental
7 rights over, an Indian child shall provide evidence to the court
8 that active efforts have been made to provide remedial services
9 and rehabilitative programs designed to prevent the breakup of
10 the Indian family and that these efforts have proved unsuccessful.
11 The court shall not order the placement or termination, unless the
12 evidence of active efforts shows there has been a vigorous and
13 concerted level of casework beyond the level that typically
14 constitutes reasonable efforts as defined in Section 727.4.
15 Reasonable efforts shall not be construed to be active efforts. The
16 active efforts shall be made in a manner that takes into account
17 the prevailing social and cultural values, conditions, and way of
18 life of the Indian child's tribe. Active efforts shall utilize the
19 available resources of the Indian child's extended family, tribe,
20 tribal and other Indian social service agencies, and individual
21 Indian caregivers. Active efforts shall include, but are not limited
22 to, all of the following:

23 (1) A request to the Indian child's tribe to convene traditional
24 and customary support and resolution actions or services.

25 (2) Identification and participation of tribally designated
26 representatives at the earliest point.

27 (3) Consultation with extended family members to identify
28 family structure and family support services that may be
29 provided by extended family members.

30 (4) Frequent visitation in the Indian child's home and the
31 homes of the child's extended family members.

32 (5) Exhaustion of all tribally appropriate family preservation
33 alternatives.

34 (6) Identification and provision of information to the child's
35 family concerning community resources that may be able to offer
36 housing, financial, and transportation assistance and actively
37 assisting the family in accessing the community resources.

38 (b) No foster care placement or guardianship may be ordered
39 in the proceeding in the absence of a determination, supported by
40 clear and convincing evidence, including testimony of a qualified

1 expert witness, as defined in Section 224.6, that the continued
2 custody of the child by the parent or Indian custodian is likely to
3 result in serious emotional or physical damage to the child.

4 SEC. 52. Section 366 of the Welfare and Institutions Code is
5 amended to read:

6 366. (a) (1) The status of every dependent child in foster
7 care shall be reviewed periodically as determined by the court
8 but no less frequently than once every six months, as calculated
9 from the date of the original dispositional hearing, until the
10 hearing described in Section 366.26 is completed. The court shall
11 consider the safety of the child and shall determine all of the
12 following:

13 (A) The continuing necessity for and appropriateness of the
14 placement.

15 (B) The extent of the agency's compliance with the case plan
16 in making reasonable efforts, or, in the case of an Indian child,
17 active efforts as defined in Section 361.7, to return the child to a
18 safe home and to complete any steps necessary to finalize the
19 permanent placement of the child, including efforts to maintain
20 relationships between a child who is 10 years of age or older who
21 is placed in a group home for six months or longer from the date
22 the child entered foster care, and individuals other than the
23 child's siblings who are important to the child, consistent with
24 the child's best interests.

25 (C) Whether there should be any limitation on the right of the
26 parent or guardian to make educational decisions for the child.
27 That limitation shall be specifically addressed in the court order
28 and may not exceed those necessary to protect the child.
29 Whenever the court specifically limits the right of the parent or
30 guardian to make educational decisions for the child, the court
31 shall at the same time appoint a responsible adult to make
32 educational decisions for the child pursuant to Section 361.

33 (D) (i) Whether the child has other siblings under the court's
34 jurisdiction, and, if any siblings exist, all of the following:

35 (I) The nature of the relationship between the child and his or
36 her siblings.

37 (II) The appropriateness of developing or maintaining the
38 sibling relationships pursuant to Section 16002.

39 (III) If the siblings are not placed together in the same home,
40 why the siblings are not placed together and what efforts are

1 being made to place the siblings together, or why those efforts
2 are not appropriate.

3 (IV) If the siblings are not placed together, the frequency and
4 nature of the visits between siblings.

5 (V) The impact of the sibling relationships on the child's
6 placement and planning for legal permanence.

7 (VI) The continuing need to suspend sibling interaction, if
8 applicable, pursuant to subdivision (c) of Section 16002.

9 (ii) The factors the court may consider in making a
10 determination regarding the nature of the child's sibling
11 relationships may include, but are not limited to, whether the
12 siblings were raised together in the same home, whether the
13 siblings have shared significant common experiences or have
14 existing close and strong bonds, whether either sibling expresses
15 a desire to visit or live with his or her sibling, as applicable, and
16 whether ongoing contact is in the child's best emotional interests.

17 (E) The extent of progress which has been made toward
18 alleviating or mitigating the causes necessitating placement in
19 foster care.

20 (2) The court shall project a likely date by which the child may
21 be returned to and safely maintained in the home or placed for
22 adoption, legal guardianship, or in another planned permanent
23 living arrangement.

24 (b) Subsequent to the hearing, periodic reviews of each child
25 in foster care shall be conducted pursuant to the requirements of
26 Sections 366.3 and 16503.

27 (c) If the child has been placed out of state, each review
28 described in subdivision (a) and any reviews conducted pursuant
29 to Sections 366.3 and 16503 shall also address whether the
30 out-of-state placement continues to be the most appropriate
31 placement selection and in the best interests of the child.

32 (d) A child may not be placed in an out-of-state group home,
33 or remain in an out-of-state group home, unless the group home
34 is in compliance with Section 7911.1 of the Family Code.

35 SEC. 53. Section 366.26 of the Welfare and Institutions Code
36 is amended to read:

37 366.26. (a) This section applies to children who are adjudged
38 dependent children of the juvenile court pursuant to subdivision
39 (c) of Section 360. The procedures specified herein are the
40 exclusive procedures for conducting these hearings; Part 2

(commencing with Section 3020) of Division 8 of the Family Code is not applicable to these proceedings. Section 8714.7 of the Family Code is applicable and available to all dependent children meeting the requirements of that section, if the postadoption contact agreement has been entered into voluntarily. For children who are adjudged dependent children of the juvenile court pursuant to subdivision (c) of Section 360, this section and Sections 8604, 8605, 8606, and 8700 of the Family Code and Chapter 5 (commencing with Section 7660) of Part 3 of Division 12 of the Family Code specify the exclusive procedures for permanently terminating parental rights with regard to, or establishing legal guardianship of, the child while the child is a dependent child of the juvenile court.

(b) At the hearing, that shall be held in juvenile court for all children who are dependents of the juvenile court, the court, in order to provide stable, permanent homes for these children, shall review the report as specified in Section 361.5, 366.21, or 366.22, shall indicate that the court has read and considered it, shall receive other evidence that the parties may present, and then shall make findings and orders in the following order of preference:

(1) Terminate the rights of the parent or parents and order that the child be placed for adoption and, upon the filing of a petition for adoption in the juvenile court, order that a hearing be set. The court shall proceed with the adoption after the appellate rights of the natural parents have been exhausted.

(2) On making a finding under paragraph (3) of subdivision (c), identify adoption as the permanent placement goal and order that efforts be made to locate an appropriate adoptive family for the child within a period not to exceed 180 days.

(3) Appoint a legal guardian for the child and order that letters of guardianship issue.

(4) Order that the child be placed in long-term foster care, subject to the periodic review of the juvenile court under Section 366.3.

In choosing among the above alternatives the court shall proceed pursuant to subdivision (c).

(c) (1) If the court determines, based on the assessment provided as ordered under subdivision (i) of Section 366.21 or subdivision (b) of Section 366.22, and any other relevant

evidence, by a clear and convincing standard, that it is likely the child will be adopted, the court shall terminate parental rights and order the child placed for adoption. The fact that the child is not yet placed in a preadoptive home nor with a relative or foster family who is prepared to adopt the child, shall not constitute a basis for the court to conclude that it is not likely the child will be adopted. A finding under subdivision (b) or paragraph (1) of subdivision (e) of Section 361.5 that reunification services shall not be offered, under subdivision (e) of Section 366.21 that the whereabouts of a parent have been unknown for six months or that the parent has failed to visit or contact the child for six months or that the parent has been convicted of a felony indicating parental unfitness, or, under Section 366.21 or 366.22, that the court has continued to remove the child from the custody of the parent or guardian and has terminated reunification services, shall constitute a sufficient basis for termination of parental rights unless the court finds a compelling reason for determining that termination would be detrimental to the child due to one or more of the following circumstances:

(A) The parents or guardians have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship. “Guardians” shall include an “Indian custodian” as defined in the Indian Child Welfare Act (25 U.S.C. 1903(6)).

(B) A child 12 years of age or older objects to termination of parental rights.

(C) The child is placed in a residential treatment facility, adoption is unlikely or undesirable, and continuation of parental rights will not prevent finding the child a permanent family placement if the parents cannot resume custody when residential care is no longer needed.

(D) The child is living with a nonrelative foster parent who is unable or unwilling to adopt the child because of exceptional circumstances, that do not include an unwillingness to accept legal or financial responsibility for the child, but who is willing and capable of providing the child with a stable and permanent environment and the removal of the child from the physical custody of his or her foster parent would be detrimental to the emotional well-being of the child. This subparagraph does not apply to any child who is either (i) under six years of age or (ii) a

1 member of a sibling group where at least one child is under six
2 years of age and the siblings are, or should be, permanently
3 placed together.

4 (E) There would be substantial interference with a child's
5 sibling relationship, taking into consideration the nature and
6 extent of the relationship, including, but not limited to, whether
7 the child was raised with a sibling in the same home, whether the
8 child shared significant common experiences or has existing
9 close and strong bonds with a sibling, and whether ongoing
10 contact is in the child's best interest, including the child's
11 long-term emotional interest, as compared to the benefit of legal
12 permanence through adoption. When a child's removal and
13 subsequent lack of contact with siblings has prevented the child
14 from establishing or maintaining sibling relationships, the court
15 shall consider the potential benefit of establishing and
16 maintaining sibling relationships when applying this
17 subparagraph.

18 (F) The child is living with a relative who is willing and
19 capable of providing the child with a stable and permanent
20 environment and the removal of the child from the physical
21 custody of his or her relative would be detrimental to the
22 emotional well-being of the child. "Relative" shall include an
23 "extended family member" as defined in the Indian Child
24 Welfare Act (25 U.S.C. Sec. 1903(2)).

25 (G) The child is an Indian child and there is a compelling
26 reason for determining that termination of parental rights would
27 not be in the best interest of the child, including, but not limited
28 to:

29 (i) Termination of parental rights would substantially interfere
30 with the child's connection to his or her tribal community or the
31 child's tribal membership rights.

32 (ii) The child's tribe has identified guardianship, long-term
33 foster care with a fit and willing relative, or another planned
34 permanent living arrangement for the child.

35 If the court finds that termination of parental rights would be
36 detrimental to the child pursuant to subparagraph (A), (B), (C),
37 (D), (E), (F) or (G), it shall state its reasons in writing or on the
38 record.

39 (2) The court shall not terminate parental rights unless:

1 (A) At each hearing at which the court was required to
2 consider reasonable efforts or services, the court has found that
3 reasonable efforts were made or that reasonable services were
4 offered or provided.

5 (B) In the case of an Indian child:

6 (i) At the hearing terminating parental rights and at each prior
7 hearing at which the court was required to consider active efforts
8 or services the court has found, supported by clear and
9 convincing evidence, that active efforts were made in accordance
10 with Section 361.7.

11 (ii) The court has made a determination at the hearing
12 terminating parental rights, supported by evidence beyond a
13 reasonable doubt, including testimony of one or more “qualified
14 expert witnesses” as defined in Section 224.6, that the continued
15 custody of the child by the parent is likely to result in serious
16 emotional or physical damage to the child.

17 (3) If the court finds that termination of parental rights would
18 not be detrimental to the child pursuant to paragraph (1) and that
19 the child has a probability for adoption but is difficult to place for
20 adoption and there is no identified or available prospective
21 adoptive parent, the court may identify adoption as the
22 permanent placement goal and without terminating parental
23 rights, order that efforts be made to locate an appropriate
24 adoptive family for the child within a period not to exceed 180
25 days. During this 180-day period, the public agency responsible
26 for seeking adoptive parents for each child shall, to the extent
27 possible, ask each child who is 10 years of age or older who is
28 placed in a group home for six months or longer from the date
29 the child entered foster care, to identify any individuals, other
30 than the child’s siblings, who are important to the child, in order
31 to identify potential adoptive parents. The public agency may ask
32 any other child to provide that information, as appropriate.
33 During the 180-day period, the public agency shall, to the extent
34 possible, contact other private and public adoption agencies
35 regarding the availability of the child for adoption. During the
36 180-day period, the public agency shall conduct the search for
37 adoptive parents in the same manner as prescribed for children in
38 Sections 8708 and 8709 of the Family Code. At the expiration of
39 this period, another hearing shall be held and the court shall
40 proceed pursuant to paragraph (1) or (3) of subdivision (b). For

purposes of this section, a child may only be found to be difficult to place for adoption if there is no identified or available prospective adoptive parent for the child because of the child's membership in a sibling group, or the presence of a diagnosed medical, physical, or mental handicap, or the child is the age of seven years or more.

(4) (A) If the court finds that adoption of the child or termination of parental rights is not in the best interest of the child, because one of the conditions in subparagraph (A), (B), (C), (D), (E), (F), or (G) of paragraph (1) or in paragraph (2) applies, the court shall either order that the present caretakers or other appropriate persons shall become legal guardians of the child or order that the child remain in long-term foster care. Legal guardianship shall be considered before long-term foster care, if it is in the best interests of the child and if a suitable guardian can be found. A child who is 10 years of age or older who is placed in a group home for six months or longer from the date the child entered foster care, shall be asked to identify any individuals, other than the child's siblings, who are important to the child, in order to identify potential guardians. The agency may ask any other child to provide that information, as appropriate.

(B) If the child is living with a relative or a foster parent who is willing and capable of providing a stable and permanent environment, but not willing to become a legal guardian, the child shall not be removed from the home if the court finds the removal would be seriously detrimental to the emotional well-being of the child because the child has substantial psychological ties to the relative caretaker or foster parents.

(C) The court shall also make an order for visitation with the parents or guardians unless the court finds by a preponderance of the evidence that the visitation would be detrimental to the physical or emotional well-being of the child.

(5) If the court finds that the child should not be placed for adoption, that legal guardianship shall not be established, and that there are no suitable foster parents except exclusive-use homes available to provide the child with a stable and permanent environment, the court may order the care, custody, and control of the child transferred from the county welfare department to a licensed foster family agency. The court shall consider the

1 written recommendation of the county welfare director regarding
2 the suitability of the transfer. The transfer shall be subject to
3 further court orders.

4 The licensed foster family agency shall place the child in a
5 suitable licensed or exclusive-use home that has been certified by
6 the agency as meeting licensing standards. The licensed foster
7 family agency shall be responsible for supporting the child and
8 providing appropriate services to the child, including those
9 services ordered by the court. Responsibility for the support of
10 the child shall not, in and of itself, create liability on the part of
11 the foster family agency to third persons injured by the child.
12 Those children whose care, custody, and control are transferred
13 to a foster family agency shall not be eligible for foster care
14 maintenance payments or child welfare services, except for
15 emergency response services pursuant to Section 16504.

16 (d) The proceeding for the appointment of a guardian for a
17 child who is a dependent of the juvenile court shall be in the
18 juvenile court. If the court finds pursuant to this section that legal
19 guardianship is the appropriate permanent plan, it shall appoint
20 the legal guardian and issue letters of guardianship. The
21 assessment prepared pursuant to subdivision (g) of Section 361.5,
22 subdivision (i) of Section 366.21, and subdivision (b) of Section
23 366.22 shall be read and considered by the court prior to the
24 appointment, and this shall be reflected in the minutes of the
25 court. The person preparing the assessment may be called and
26 examined by any party to the proceeding.

27 (e) The proceeding for the adoption of a child who is a
28 dependent of the juvenile court shall be in the juvenile court if
29 the court finds pursuant to this section that adoption is the
30 appropriate permanent plan and the petition for adoption is filed
31 in the juvenile court. Upon the filing of a petition for adoption,
32 the juvenile court shall order that an adoption hearing be set. The
33 court shall proceed with the adoption after the appellate rights of
34 the natural parents have been exhausted. The full report required
35 by Section 8715 of the Family Code shall be read and considered
36 by the court prior to the adoption and this shall be reflected in the
37 minutes of the court. The person preparing the report may be
38 called and examined by any party to the proceeding. It is the
39 intent of the Legislature, pursuant to this subdivision, to give
40 potential adoptive parents the option of filing in the juvenile

1 court the petition for the adoption of a child who is a dependent
2 of the juvenile court. Nothing in this section is intended to
3 prevent the filing of a petition for adoption in any other court as
4 permitted by law, instead of in the juvenile court.

5 (f) At the beginning of any proceeding pursuant to this section,
6 if the child or the parents are not being represented by previously
7 retained or appointed counsel, the court shall proceed as follows:

8 (1) In accordance with subdivision (c) of Section 317, if a
9 child before the court is without counsel, the court shall appoint
10 counsel unless the court finds that the child would not benefit
11 from the appointment of counsel. The court shall state on the
12 record its reasons for that finding.

13 (2) If a parent appears without counsel and is unable to afford
14 counsel, the court shall appoint counsel for the parent, unless this
15 representation is knowingly and intelligently waived. The same
16 counsel shall not be appointed to represent both the child and his
17 or her parent. The public defender or private counsel may be
18 appointed as counsel for the parent.

19 (3) Private counsel appointed under this section shall receive a
20 reasonable sum for compensation and expenses, the amount of
21 which shall be determined by the court. The amount shall be paid
22 by the real parties in interest, other than the child, in any
23 proportions the court deems just. However, if the court finds that
24 any of the real parties in interest are unable to afford counsel, the
25 amount shall be paid out of the general fund of the county.

26 (g) The court may continue the proceeding for not to exceed
27 30 days as necessary to appoint counsel, and to enable counsel to
28 become acquainted with the case.

29 (h) (1) At all proceedings under this section, the court shall
30 consider the wishes of the child and shall act in the best interests
31 of the child.

32 (2) In accordance with Section 349, the child shall be present
33 in court if the child or the child's counsel so requests or the court
34 so orders. If the child is 10 years of age or older and is not
35 present at a hearing held pursuant to this section, the court shall
36 determine whether the minor was properly notified of his or her
37 right to attend the hearing and inquire as to the reason why the
38 child is not present.

39 (3) (A) The testimony of the child may be taken in chambers
40 and outside the presence of the child's parent or parents, if the

1 child's parent or parents are represented by counsel, the counsel
2 is present, and any of the following circumstances exist:

3 (i) The court determines that testimony in chambers is
4 necessary to ensure truthful testimony.

5 (ii) The child is likely to be intimidated by a formal courtroom
6 setting.

7 (iii) The child is afraid to testify in front of his or her parent or
8 parents.

9 (B) After testimony in chambers, the parent or parents of the
10 child may elect to have the court reporter read back the testimony
11 or have the testimony summarized by counsel for the parent or
12 parents.

13 (C) The testimony of a child also may be taken in chambers
14 and outside the presence of the guardian or guardians of a child
15 under the circumstances specified in this subdivision.

16 (i) Any order of the court permanently terminating parental
17 rights under this section shall be conclusive and binding upon the
18 child, upon the parent or parents and upon all other persons who
19 have been served with citation by publication or otherwise as
20 provided in this chapter. After making the order, the court shall
21 have no power to set aside, change, or modify it, but nothing in
22 this section shall be construed to limit the right to appeal the
23 order.

24 (j) If the court, by order or judgment, declares the child free
25 from the custody and control of both parents, or one parent if the
26 other does not have custody and control, the court shall at the
27 same time order the child referred to the State Department of
28 Social Services or a licensed adoption agency for adoptive
29 placement by the agency. However, a petition for adoption may
30 not be granted until the appellate rights of the natural parents
31 have been exhausted. The State Department of Social Services or
32 licensed adoption agency shall be responsible for the custody and
33 supervision of the child and shall be entitled to the exclusive care
34 and control of the child at all times until a petition for adoption is
35 granted. With the consent of the agency, the court may appoint a
36 guardian of the child, who shall serve until the child is adopted.

37 (k) Notwithstanding any other provision of law, the
38 application of any person who, as a relative caretaker or foster
39 parent, has cared for a dependent child for whom the court has
40 approved a permanent plan for adoption, or who has been freed

1 for adoption, shall be given preference with respect to that child
2 over all other applications for adoptive placement if the agency
3 making the placement determines that the child has substantial
4 emotional ties to the relative caretaker or foster parent and
5 removal from the relative caretaker or foster parent would be
6 seriously detrimental to the child's emotional well-being.

7 As used in this subdivision, "preference" means that the
8 application shall be processed and, if satisfactory, the family
9 study shall be completed before the processing of the application
10 of any other person for the adoptive placement of the child.

11 (I) (1) An order by the court that a hearing pursuant to this
12 section be held is not appealable at any time unless all of the
13 following applies:

14 (A) A petition for extraordinary writ review was filed in a
15 timely manner.

16 (B) The petition substantively addressed the specific issues to
17 be challenged and supported that challenge by an adequate
18 record.

19 (C) The petition for extraordinary writ review was summarily
20 denied or otherwise not decided on the merits.

21 (2) Failure to file a petition for extraordinary writ review
22 within the period specified by rule, to substantively address the
23 specific issues challenged, or to support that challenge by an
24 adequate record shall preclude subsequent review by appeal of
25 the findings and orders made pursuant to this section.

26 (3) The Judicial Council shall adopt rules of court, effective
27 January 1, 1995, to ensure all of the following:

28 (A) A trial court, after issuance of an order directing a hearing
29 pursuant to this section be held, shall advise all parties of the
30 requirement of filing a petition for extraordinary writ review as
31 set forth in this subdivision in order to preserve any right to
32 appeal in these issues. This notice shall be made orally to a party
33 if the party is present at the time of the making of the order or by
34 first-class mail by the clerk of the court to the last known address
35 of a party not present at the time of the making of the order.

36 (B) The prompt transmittal of the records from the trial court
37 to the appellate court.

38 (C) That adequate time requirements for counsel and court
39 personnel exist to implement the objective of this subdivision.

1 (D) That the parent or guardian, or their trial counsel or other
2 counsel, is charged with the responsibility of filing a petition for
3 extraordinary writ relief pursuant to this subdivision.

4 (4) The intent of this subdivision is to do both of the
5 following:

6 (A) Make every reasonable attempt to achieve a substantive
7 and meritorious review by the appellate court within the time
8 specified in Sections 366.21 and 366.22 for holding a hearing
9 pursuant to this section.

10 (B) Encourage the appellate court to determine all writ
11 petitions filed pursuant to this subdivision on their merits.

12 (5) This subdivision shall only apply to cases in which an
13 order to set a hearing pursuant to this section is issued on or after
14 January 1, 1995.

15 (m) Except for subdivision (j), this section shall also apply to
16 minors adjudged wards pursuant to Section 727.31.

17 SEC. 54. Section 727.4 of the Welfare and Institutions Code
18 is amended to read:

19 727.4. (a) (1) Notice of any hearing pursuant to Section 727,
20 727.2, or 727.3 shall be mailed by the probation officer to the
21 minor, the minor's parent or guardian, any adult provider of care
22 to the minor including, but not limited to, foster parents, relative
23 caregivers, preadoptive parents, community care facility, or
24 foster family agency, and to the counsel of record if the counsel
25 of record was not present at the time that the hearing was set by
26 the court, by first-class mail addressed to the last known address
27 of the person to be notified, or shall be personally served on
28 those persons, not earlier than 30 days nor later than 15 days
29 preceding the date of the hearing. The notice shall contain a
30 statement regarding the nature of the status review or
31 permanency planning hearing and any change in the custody or
32 status of the minor being recommended by the probation
33 department. The notice shall also include a statement informing
34 the foster parents, relative caregivers, or preadoptive parents that
35 he or she may attend all hearings or may submit any information
36 he or she deems relevant to the court in writing. The foster
37 parents, relative caregiver, and preadoptive parents are entitled to
38 notice and opportunity to be heard but need not be made parties
39 to the proceedings. Proof of notice shall be filed with the court.

1 (2) If the court or probation officer knows or has reason to
2 know that the minor may be an Indian child, any notice sent
3 under this section shall comply with the requirements of Section
4 224.2.

5 (b) At least 10 calendar days prior to each status review and
6 permanency planning hearing, after the hearing during which the
7 court orders that the care, custody and control of the minor to be
8 under the supervision of the probation officer for placement
9 pursuant to subdivision (a) of Section 727, the probation officer
10 shall file a social study report with the court, pursuant to the
11 requirements listed in Section 706.5.

12 (c) The probation department shall inform the minor, the
13 minor's parent or guardian, and all counsel of record that a copy
14 of the social study prepared for the hearing will be available 10
15 days prior to the hearing and may be obtained from the probation
16 officer.

17 (d) As used in Article 15 (commencing with Section 625) to
18 Article 18 (commencing with Section 725), inclusive:

19 (1) "Foster care" means residential care provided in any of the
20 settings described in Section 11402.

21 (2) "At risk of entering foster care" means that conditions
22 within a minor's family may necessitate his or her entry into
23 foster care unless those conditions are resolved.

24 (3) "Preadoptive parent" means a licensed foster parent who
25 has been approved for adoption by the State Department of
26 Social Services when it is acting as an adoption agency or by a
27 licensed adoption agency.

28 (4) "Date of entry into foster care" means the date that is 60
29 days after the date on which the minor was removed from his or
30 her home, unless one of the exceptions below applies:

31 (A) If the minor is detained pending foster care placement, and
32 remains detained for more than 60 days, then the date of entry
33 into foster care means the date the court adjudges the minor a
34 ward and orders the minor placed in foster care under the
35 supervision of the probation officer.

36 (B) If, before the minor is placed in foster care, the minor is
37 committed to a ranch, camp, school, or other institution pending
38 placement, and remains in that facility for more than 60 days,
39 then the "date of entry into foster care" is the date the minor is
40 physically placed in foster care.

(C) If at the time the wardship petition was filed, the minor was a dependent of the juvenile court and in out-of-home placement, then the “date of entry into foster care” is the earlier of the date the juvenile court made a finding of abuse or neglect, or 60 days after the date on which the child was removed from his or her home.

(5) “Reasonable efforts” means:

(A) Efforts made to prevent or eliminate the need for removing the minor from the minor’s home.

(B) Efforts to make it possible for the minor to return home, including, but not limited to, case management, counseling, parenting training, mentoring programs, vocational training, educational services, substance abuse treatment, transportation, and therapeutic day services.

(C) Efforts to complete whatever steps are necessary to finalize a permanent plan for the minor.

(D) In child custody proceedings involving an Indian child, shall also include “active efforts” as defined in Section 361.7.

(6) “Relative” means an adult who is related to the minor by blood, adoption, or affinity within the fifth degree of kinship including stepparents, stepsiblings, and all relatives whose status is preceded by the words “great,” “great-great,” “grand,” or the spouse of any of these persons even if the marriage was terminated by death or dissolution. “Relative” shall also include an “extended family member” as defined in the Indian Child Welfare Act (25 U.S.C. Sec. 1903(2)).

(7) “Hearing” means a noticed proceeding with findings and orders that are made on a case-by-case basis, heard by either of the following:

(A) A judicial officer, in a courtroom, recorded by a court reporter.

(B) An administrative panel, provided that the hearing is a status review hearing and that the administrative panel meets the following conditions:

(i) The administrative review shall be open to participation by the minor and parents or legal guardians and all those persons entitled to notice under subdivision (a).

(ii) The minor and his or her parents or legal guardians receive proper notice as required in subdivision (a).

1 (iii) The administrative review panel is composed of persons
2 appointed by the presiding judge of the juvenile court, the
3 membership of which shall include at least one person who is not
4 responsible for the case management of, or delivery of services
5 to, the minor or the parents who are the subjects of the review.

6 (iv) The findings of the administrative review panel shall be
7 submitted to the juvenile court for the court's approval and shall
8 become part of the official court record.

9 SEC. 55. If the Commission on State Mandates determines
10 that this act contains costs mandated by the state, reimbursement
11 to local agencies and school districts for those costs shall be
12 made pursuant to Part 7 (commencing with Section 17500) of
13 Division 4 of Title 2 of the Government Code.

14 *SEC. 56. This act is an urgency statute necessary for the*
15 *immediate preservation of the public peace, health, or safety*
16 *within the meaning of Article IV of the Constitution and shall go*
17 *into immediate effect. The facts constituting the necessity are:*

18 *In order to clarify the scope of the Indian Child Welfare Act for*
19 *purposes of applying those provisions in this state, it is necessary*
20 *that the act take effect immediately.*